

CHAPTER 657
LIMITATION OF ACTIONS

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Case Notes

The statutory scheme and legislative history of §386-8 indicated that the phrase "except as limited by [this] chapter" was not intended to restrict an employee's right to intervene in a lawsuit that was timely filed by his or her employer; thus, employee was not barred by the statute of limitations under §657-7 to intervene in plaintiff insurer's timely filed suit, and the circuit court erred in granting defendant's motion for summary judgment. 126 H. 406, 271 P.3d 1165 (2012).

"PART I. PERSONAL ACTIONS

Case Notes

Section 657-20 is limited to causes of action mentioned in this part or §663-3, and therefore does not apply to plaintiff's claim brought pursuant to chapter 480. 777 F. Supp. 2d 1224 (2011).

§657-1 Six years. The following actions shall be commenced within six years next after the cause of action accrued, and not after:

- (1) Actions for the recovery of any debt founded upon any contract, obligation, or liability, excepting such as are brought upon the judgment or decree of a court; excepting further that actions for the recovery of any debt founded upon any contract, obligation, or liability made pursuant to chapter 577A shall be governed by chapter 577A;
- (2) Actions upon judgments or decrees rendered in any court not of record in the State, or, subject to section 657-9, in any court of record in any foreign jurisdiction;
- (3) Actions for taking or detaining any goods or chattels, including actions in the nature of replevin; and
- (4) Personal actions of any nature whatsoever not specifically covered by the laws of the State. [CC 1859, §1036; am imp L 1907, c 113, §1; am L 1913, c 19, §1; RL 1925, §2639; RL 1935, §3910; am L 1943, c 139, §1; RL 1945, §10421; RL 1955, §241-1; am L 1965, c 139, §1; HRS §657-1; am L 1972, c 105, §1(a); am L 1978, c 109, §3]

Revision Note

In paragraph (3), "and" added after ending punctuation pursuant to §23G-15.

Cross References

Criminal prosecutions, see §701-108.

Decedent's cause of action, see §560:3-109 and §560:3-802.

Probate proceedings, see §560:3-108.

Proceedings against trustees after final account, see §560:7-307.

See Uniform Commercial Code: §490:2-725, four-year period of limitation on actions for breach of contract for sale of goods, including actions for breach of warranty.

Rules of Court

Commencement of actions, see HRCF rule 3.

Attorney General Opinions

Statute of limitations does not run against State in absence of express provision including it. Att. Gen. Op. 63-36.

Case Notes

Six-year limitations period for contracts was considered adequate time for union trust fund to bring action against employer. 823 F.2d 289 (1987).

Paragraph (1)'s six-year limitation period applied to employer's claim for breach of duty of loyalty. 338 F.3d 1082 (2003).

Applicable limitations period for actions brought under 42 U.S.C. §1983. 574 F. Supp. 1510 (1983); 749 F.2d 588 (1984).

Six-year statute of limitations governs federal securities fraud claims brought pursuant to Rule 10b-5 of the Rules and Regulations of the Securities Exchange Act of 1934 and claims brought under Hawaii's civil RICO statute. 758 F. Supp. 1357 (1991).

Statute of limitations in §294-36 [§431:10C-315's predecessor] applied to underinsured motorist benefits claim, where defendant asserted that appropriate statute of limitations was the statute of limitations applicable to contract actions under this section. 847 F. Supp. 787 (1994).

Where defendant contended that claim for breach of implied covenant of good faith and fair dealing was barred by two-year statute of limitations governing damage to persons and property (§657-7), since there is no element in the cause of action for

bad faith that requires a plaintiff to suffer personal injury, it is not in reality a cause of action based upon a "personal injury", and the applicable statute of limitations is six years and is found in the catchall provision of this section (§657-1(4)). 986 F. Supp. 1334 (1997).

Magistrate's finding that paragraph (1) did not bar defendant's breach of contract counterclaim due to its relation back under federal rules of civil procedure rule 15(c) not clearly erroneous. 217 F. Supp. 2d 1077 (2001).

Count of complaint alleging breach of contract under the second alleged agreement was barred by the statute of limitations; plaintiffs had constructive knowledge of their cause of action arising out of the second alleged agreement no later than 1996 and the doctrine of constructive notice applied despite any fiduciary relationship that may have existed. Portions of the counts sounding in fraud that related to the second alleged agreement were barred by the statute of limitations. 360 F. Supp. 2d 1122 (2005).

Some of plaintiff's claims for additional minimum rent and percentage rent were time-barred by paragraph (1), where the court found that under Hawaii law, a cause of action for rent accrues upon the due date of each rental payment. 515 F. Supp. 2d 1141 (2007).

Whether the appropriate analogous statute of limitations in actions for attorney's fees under the Individuals with Disabilities Education Act was §657-7 or paragraph (4), discussed. 621 F. Supp. 2d 1013 (2008).

Doctrine of anticipatory repudiation did not apply to the statute of limitations on plaintiff insured's breach of contract claim where plaintiff claimed that plaintiff fully performed under the life insurance policy and defendant insurers' time for performance had not yet arrived; consequently, plaintiff could not bring an action for breach of contract because it was untimely and, thus, defendant's motion for summary judgment was granted. 792 F. Supp. 2d 1111 (2011).

Plaintiff insured's breach of contract claim time-barred where the claim was brought over twenty-five years after defendant insurers' demands for additional payments and over ten years after defendants confirmed to plaintiff that plaintiff's life insurance policy was terminated; defendants' motion for summary judgment on this issue granted. 792 F. Supp. 2d 1111 (2011).

Plaintiff's claims sounding in fraud were subject to a six-year statute of limitations. 992 F. Supp. 2d 1053 (2014).

Plaintiff was charged with constructive knowledge of the contents of the deed on the date it was recorded; because plaintiff's complaint was filed more than six years after the recording of the allegedly forged deed, plaintiff's claims

sounding in fraud were barred by the applicable statute of limitations. 992 F. Supp. 2d 1053 (2014).

Claims for legal malpractice governed by paragraph (1). 55 H. 167, 517 P.2d 1 (1973).

Claim based on express warranty is in contract and is governed by clause (1); breach of express warranty occurs when. 63 H. 210, 626 P.2d 173 (1981).

Claim based on fraudulent representations or negligent representations is governed by clause (4). 63 H. 210, 620 P.2d 173 (1981).

Not applicable limitations period for arbitration of disputes under no-fault policy. 68 H. 117, 706 P.2d 16 (1985).

Section inapplicable to action seeking enforcement of promissory note which had merged into divorce decree. 73 H. 566, 836 P.2d 1081 (1992).

Two-year statute of limitations of §657-7 governs actions brought under 42 U.S.C. §1983 rather than six-year catchall limitations period of paragraph (4). 73 H. 578, 837 P.2d 1247 (1992).

Where fraudulent misrepresentation action was governed by general limitations period of six years under paragraph (4) and complaint was filed six years four months after death of person making alleged misrepresentation, summary judgment properly granted. 86 H. 21, 946 P.2d 1317 (1997).

The statute of limitations in a legal malpractice claim is governed by paragraph (1), the accrual of which is determined by application of the discovery rule. 95 H. 247, 21 P.3d 452 (2001).

Claims against sovereign. Statute does not run on claim against sovereign who cannot be sued. 3 H. 483 (1873). When suit permitted against sovereign must be brought within time limited. 11 H. 404 (1898).

Exceptions. Statute does not run between death of intestate and appointment of administrator. 3 H. 367 (1872); see 3 H. 483 (1873). Although statute has run, equity may decree repayment. 4 H. 593 (1882). Continuing express trust in personalty not within the statute. 5 H. 497 (1885). Claims of Territory for taxes not barred. 21 H. 597 (1913); 18 H. 252 (1907). Statute tolled by disability of infancy, when. 20 H. 170 (1910). This section does not apply to injuries to land. 20 H. 237 (1910). Statute does not begin to run against district court judgment pending judgment on appeal. 20 H. 370 (1911). Parties may stipulate as to time for action and if reasonable statute does not apply. 23 H. 160, 163 (1916). Ordinarily defense of laches will be applied by analogy to the statute of limitations. 9 H. 571 (1894); 44 H. 297, 300, 353 P.2d 820 (1960). See 32 H. 936 (1934), aff'd 75 F.2d 74 (1935). Defense of statute may be

waived. 9 H. 566 (1894); 20 H. 4 (1910); 22 H. 655 (1915). On default court will not exercise for defendant the privilege of the statute. 22 H. 721 (1915). Defense of statute of limitations is personal to defendant; creditor may not invoke statute to cut off prior garnishment based on judgment more than six years old. 50 H. 273, 439 P.2d 217 (1968).

Account stated, nature of. 51 H. 451, 462 P.2d 476 (1969).

Under HRCF 15(c), claim asserted in amended pleadings after statute has run will not be barred if it arose out of a timely pleaded factual situation. 52 H. 563, 481 P.2d 310 (1971).

Waiver of statute; where one lulls another as by a stipulation into allowing the statute to run out, one cannot assert the statute as a bar. 52 H. 563, 481 P.2d 310 (1971).

Miscellaneous. Merchants' accounts not exempt. 2 H. 730 (1865). Concerning promissory notes. 4 H. 358 (1881); 19 H. 553 (1909); 23 H. 328 (1916). Promise to pay note of another. 17 H. 32 (1905). Partners' accounts. 6 H. 162 (1875). Assumption of partnership debts on dissolution. 8 H. 439 (1892). Effect of statute, consideration of in connection with allowance of amendments of pleadings. 9 H. 543 (1894); 16 H. 485 (1905); 30 H. 132, 145 (1927). Guardian and ward. 20 H. 378 (1911). Without demand statute does not run in favor of fiduciary agent until death of one party. 19 H. 359 (1909). Use and occupation by cotenant. 10 H. 662 (1897). Foreclosure of mortgage not barred though statute has run against note. 20 H. 620 (1911). Statute commences on breach of covenant of quiet enjoyment in lease. 23 H. 349, 354 (1916). Implied covenant. 41 H. 124 (1955). On a continuing contract, statute commences not with first breach or failure, but when plaintiff elects to disaffirm contract. 23 H. 739 (1917). Contract to cultivate land. 29 H. 579 (1927). Computation of period. 29 H. 579 (1927). Revival by statute of barred claim. 33 H. 379 (1935).

New promise. Part payment as new promise. 9 H. 272 (1893); 11 H. 706 (1899); 24 H. 216 (1918). In order to remove bar must be express promise or admission of debt which party is liable to pay. 18 H. 569 (1908); 23 H. 696 (1917). Acknowledgment and new promise. 21 H. 167 (1912). Payment by one joint and several obligor without knowledge of others start statute anew against all. 22 H. 140 (1914). Interest payment by maker without knowledge of guarantor does not start statute anew against guarantor. 28 H. 275 (1925).

Effect of new promise on limitation period. 57 H. 429, 558 P.2d 479 (1977).

A new promise by debtor to pay debt, whether then barred by applicable statute of limitations or not, binds debtor for new period. 2 H. App. 383, 633 P.2d 550 (1981).

Cited: 190 F.2d 155, 159 (1951); 198 F. Supp. 78, 90 (1961); 256 F. Supp. 204, 214 (1966); 3 H. 21, 24 (1867); 3 H. 614 (1875); 9 H. 121 (1893); 10 H. 249, 251 (1896); 10 H. 614, 620 (1897); 11 H. 100 (1897); 19 H. 511, 513 (1909); 20 H. 433, 443 (1911); 22 H. 174, 181 (1914); 22 H. 357, 362 (1914); 25 H. 483 (1920); 28 H. 519, 524 (1925); 29 H. 376, 389 (1926); 33 H. 795, 796 (1936); 36 H. 530 (1943); 43 H. 17, 18 (1958).

Mentioned: 11 F. Supp. 2d 1204 (1998).

" **[\$657-1.5] Limitation of actions not applicable to State.** No limitation of actions provided for under this or any other chapter shall apply to bar the institution or maintenance of any action by or on behalf of the State and its agencies, unless the State is specifically designated in such a statute as subject to the limitation period contained therein. No defense to any action brought by the State or any of its agencies shall be predicated upon the lapse of time. [L 1991, c 8, §1]

Case Notes

Plaintiffs water commission and department of water supply of county of Hawaii could not benefit from this section; plaintiffs were obligated to bring their claims in a timely manner within applicable limitations period. 930 F. Supp. 1411 (1996).

Where plaintiff office of Hawaiian affairs brought suit in its own corporate name under §10-16, rather than as an agency of the State on behalf of the people of the State, this section did not exempt plaintiff from the statute of limitations for bringing a suit under §673-10. 110 H. 338, 133 P.3d 767 (2006).

" **§657-1.8 Civil action arising from sexual offenses; application; certificate of merit.** (a) Notwithstanding any law to the contrary, except as provided under subsection (b), no action for recovery of damages based on physical, psychological, or other injury or condition suffered by a minor arising from the sexual abuse of the minor by any person shall be commenced against the person who committed the act of sexual abuse more than:

- (1) Eight years after the eighteenth birthday of the minor or the person who committed the act of sexual abuse attains the age of majority, whichever occurs later; or
- (2) Three years after the date the minor discovers or reasonably should have discovered that psychological injury or illness occurring after the age of minor's eighteenth birthday was caused by the sexual abuse, whichever comes later.

A civil cause of action for the sexual abuse of a minor shall be based upon sexual acts that constituted or would have constituted a criminal offense under part V or VI of chapter 707.

(b) For a period of four years after April 24, 2012, a victim of child sexual abuse that occurred in this State may file a claim in a circuit court of this State against the person who committed the act of sexual abuse if the victim is barred from filing a claim against the victim's abuser due to the expiration of the applicable civil statute of limitations that was in effect prior to April 24, 2012.

A claim may also be brought under this subsection against a legal entity if:

- (1) The person who committed the act of sexual abuse against the victim was employed by an institution, agency, firm, business, corporation, or other public or private legal entity that owed a duty of care to the victim; or
- (2) The person who committed the act of sexual abuse and the victim were engaged in an activity over which the legal entity had a degree of responsibility or control.

Damages against the legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity.

(c) A defendant against whom a civil action is commenced may recover attorney's fees if the court determines that a false accusation was made with no basis in fact and with malicious intent. A verdict in favor of the defendant shall not be the sole basis for a determination that an accusation had no basis in fact and was made with malicious intent. The court shall make an independent finding of an improper motive prior to awarding attorney's fees under this section.

(d) In any civil action filed pursuant to subsection (a) or (b), a certificate of merit shall be filed by the attorney for the plaintiff, and shall be sealed and remain confidential. The certificate of merit shall include a notarized statement by a:

- (1) Psychologist licensed pursuant to chapter 465;
- (2) Marriage and family therapist licensed pursuant to chapter 451J;
- (3) Mental health counselor licensed pursuant to chapter 453D; or
- (4) Clinical social worker licensed pursuant to chapter 467E;

who is knowledgeable in the relevant facts and issues involved in the action, who is not a party to the action.

The notarized statement included in the certificate of merit shall set forth in reasonable detail the facts and opinions relied upon to conclude that there is a reasonable basis to believe that the plaintiff was subject to one or more acts that would result in an injury or condition specified in [subsection] (a). [L 2012, c 68, §1; am L 2014, c 112, §1]

" **§657-2 Mutual current account.** In all actions in the nature of debt, account, or assumpsit, brought to recover any balance due upon a mutual, open, and current account, the cause of action shall be deemed to have accrued from the time of the last item proved in the account. [CC 1859, §1038; RL 1925, §2640; RL 1935, §3911; RL 1945, §10422; RL 1955, §241-2; HRS §657-2; am L 1972, c 105, §1(b)]

Case Notes

Cited: 14 H. 495 (1902); 20 H. 433, 443 (1911); 33 H. 876, 881 (1936).

" **§657-3 Counterclaim.** (a) In the cases enumerated in subsection (b), all the provisions of this part, or any other statute of limitations, shall apply to a claim stated as a counterclaim against an opposing party in the same manner as if an action thereon had been commenced at the time when the opposing party commenced the opposing party's action or served the pleading stating the opposing party's claim, or if a different time is applicable to the opposing party's claim under the provisions of this section then at that time.

(b) Subsection (a) shall apply if the claim stated as a counterclaim:

(1) Consists of a liquidated debt or demand, or a debt or demand capable of being ascertained by calculation; or

(2) Arises out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Within the meaning of this section a counterclaim includes a claim asserted against the plaintiff by a third-party defendant and in that situation the plaintiff is deemed an opposing party. [CC 1859, §1050; RL 1925, §2641; RL 1935, §3912; RL 1945, §10423; RL 1955, §241-3; HRS §657-3; am L 1972, c 186, §1; gen ch 1985]

Rules of Court

Counterclaims and cross claims, see HRCF rule 13.

Case Notes

Cited in discussion of distinction between "set-off" and "recoupment". 62 H. 334, 614 P.2d 936 (1980).

" **§657-3.5 Relation back of amendments.** An amended pleading relates back to the date of the original pleading as provided by the rules of court.

Nothing herein limits or affects section 657-3. [L 1972, c 105, §1(c)]

" **§657-4 Two years; libel and slander.** All actions for libel or slander shall be commenced within two years after the cause of action accrued, and not after. [CC 1859, §1037; am imp L 1907, c 113, §1; am L 1913, c 19, §1; RL 1925, §2642; RL 1935, §3913; RL 1945, §10424; RL 1955, §241-4; am L 1965, c 139, §2; HRS §657-4]

Case Notes

Portions of plaintiff's defamation claim based on defendant's 2007 report and alleged 2007 statements were time-barred, where plaintiff filed the action in 2010. 892 F. Supp. 2d 1245 (2012).

Claim for defamation accrues when defamee discovers or reasonably should have discovered publication. 65 H. 478, 653 P.2d 1155 (1982).

Distinguished from "general" personal injury statute of limitations of §657-7. 73 H. 578, 837 P.2d 1247 (1992).

Cited: 42 H. 177, 179 (1957).

Mentioned: 817 F. Supp. 850 (1992).

" **§657-5 Domestic judgments and decrees.** Unless an extension is granted, every judgment and decree of any court of the State shall be presumed to be paid and discharged at the expiration of ten years after the judgment or decree was rendered. No action shall be commenced after the expiration of ten years from the date a judgment or decree was rendered or extended. No extension of a judgment or decree shall be granted unless the extension is sought within ten years of the date the original judgment or decree was rendered. A court shall not extend any judgment or decree beyond twenty years from the date of the original judgment or decree. No extension shall be granted without notice and the filing of a non-hearing motion or a hearing motion to extend the life of the judgment or decree. [CC 1859, §1051; RL 1925, §2643; am L 1927, c 16, §1; RL 1935, §3914; RL 1945, §10425; RL 1955, §241-5; HRS §657-5; am L 1972, c 105, §1(d); am L 1992, c 74, §1; am L 2001, c 145, §1]

Case Notes

District court erred in extending the judgment pursuant to a request that was not made within ten years after the original judgment was rendered. 536 F.3d 980 (2008).

Statute does not run during period decree not enforceable due to interest of a life tenant not subject to plaintiff's claim. 20 H. 225 (1910).

Applied to action seeking enforcement of promissory note where note was enforceable only as part of final divorce decree. 73 H. 566, 836 P.2d 1081 (1992).

Garnishment order conclusively presumed to be paid and discharged upon expiration of underlying judgment. 82 H. 197, 921 P.2d 117 (1996).

General scheme of §653-11 and this section is to terminate a judgment when judgment is actually paid or presumed to be paid as a matter of law. 82 H. 197, 921 P.2d 117 (1996).

Under this section, judgment, together with all rights and remedies appurtenant to it, are conclusively presumed paid and discharged after ten years unless timely renewed. 82 H. 197, 921 P.2d 117 (1996).

This section controls over HRCp rule 5(a); thus, notice of a proposed extension of a judgment pursuant to this section must be provided to the judgment debtor prior to the granting of the extension, even if the debtor is in default and is not required under rule 5(a) to be served with pleadings; although failure to provide notice under §657-7 was error, error was harmless where debtor never appeared to defend debtor's self, had an opportunity to be heard at a HRCp rule 60(b) hearing, and offered no defense on the merits to the original judgment or extension, and thus failed to demonstrate any prejudice. 120 H. 1, 200 P.3d 370 (2008).

Based on the plain language of this section, and construed in pari materia within the framework of the entire statutory scheme governing limitations of actions, "original judgment" of this section refers to the judgment that creates the rights and responsibilities that the party is seeking to extend. 121 H. 59, 214 P.3d 598 (2009).

Trial court properly extended the second amended judgment to October 17, 2019, which was less than twenty years from the date of the "original judgment" date of October 18, 1999; however, trial court erred by extending the fourth amended judgment, filed on September 6, 2001, to September 5, 2021, where the "original judgment" date for purposes of extending the fourth amended judgment was the third amended judgment date of June 26, 2000, and the court was precluded from extending the fourth

amended judgment beyond June 25, 2020. 121 H. 59, 214 P.3d 598 (2009).

Where an unextended judgment is "amended in a material and substantial respect", so that it creates the rights that are being extended, the time within which a motion to extend the judgment may be brought "begins to run from the date of the amendment", because that judgment created those rights; where, on the other hand, the unextended judgment merely makes non-substantive or non-material amendments to a prior judgment, it does not create an enforceable right and it is not appropriate that the amended judgment extend the time allowed to revive the enforceable judgment. 121 H. 59, 214 P.3d 598 (2009).

Where multiple judgments create the same rights that the party is seeking to extend, the "original judgment" is (1) the unamended judgment where the amended judgment makes non-material amendments to a prior judgment, but (2) the amended judgment where it amended the prior judgment "in a material and substantial respect". 121 H. 59, 214 P.3d 598 (2009).

Where the second amended judgment dated October 18, 1999 materially and substantially changed the first-in-time judgment and amended judgment, the second amended judgment was the "original judgment" on the false imprisonment and battery claims against defendant; as petitioner's motion to extend the second amended judgment on May 8, 2007 was filed within ten years of the date of the original judgment, the trial court properly ordered that the second amended judgment be extended. 121 H. 59, 214 P.3d 598 (2009).

Where the third amended judgment dated June 26, 2000 was amended by the fourth amended judgment on September 6, 2001, but the fourth amended judgment was a non-substantive change, the "original judgment" for purposes of extending the fourth amended judgment was the third amended judgment date; as petitioners sought to extend the fourth amended judgment on May 8, 2007 within ten years of June 26, 2000, the trial court was permitted to extend the fourth amended judgment. 121 H. 59, 214 P.3d 598 (2009).

Limitations period begins to run on each child support payment as it becomes due; decree creditor may avoid effect of statute of limitations on part of decree debt for which statute has not run by obtaining new decree on unbarred debt. 6 H. App. 201, 716 P.2d 496 (1986).

License revocation order is more like administrative order than judgment subject to ten-year limitations period. 9 H. App. 169, 828 P.2d 1287 (1992).

The notice requirement contained in this section does not apply to defaulted parties who have not appeared; thus, defendant, as a judgment debtor in default, was not entitled to

notice of extension proceedings instituted pursuant to this section. 118 H. 132 (App.), 185 P.3d 880 (2008).

Cited: 9 H. 514, 517 (1894).

" **[\$657-5.5] Judgments for support.** Every judgment for child support, including a judgment for reimbursement or other arrears, shall be presumed to be paid and discharged on the thirty-third birthday of the child for which the order of support was rendered or by the expiration of the latest period provided in section 657-5, whichever date is later. [L 1997, c 294, §1]

" **§657-6 Four years; causes arising in foreign jurisdiction, etc.** Subject to section 657-9, actions for the recovery of any debt founded upon any contract, obligation, or liability, where the cause of action has arisen in any foreign jurisdiction including actions on judgments or decrees rendered in any court not a court of record in any foreign jurisdiction but not such as are brought upon the judgment or decree of a court of record, shall be commenced within four years after the cause of action accrued, and not after. [L 1892, c 26, §1; RL 1925, §2644; RL 1935, §3915; am L 1943, c 139, §2; RL 1945, §10426; RL 1955, §241-6; HRS §657-6]

" **§657-7 Damage to persons or property.** Actions for the recovery of compensation for damage or injury to persons or property shall be instituted within two years after the cause of action accrued, and not after, except as provided in section 657-13. [L 1907, c 113, §1; am L 1913, c 19, §1; RL 1925, §2645; RL 1935, §3916; RL 1945, §10427; RL 1955, §241-7; am L 1957, c 138, §1; HRS §657-7; am L 1972, c 105, §1(e)]

Attorney General Opinions

Statute does not run against State. Att. Gen. Op. 63-36.

Law Journals and Reviews

Where complaint is filed on last day of two-year limitation period and counterclaim is filed within three months thereafter, counterclaim is late and subject to dismissal. 4 HBJ, no. 3, at 32 (1966).

Tort and Insurance "Reform" in a Common Law Court. 14 UH L. Rev. 55 (1992).

Latent Disease and Toxic Torts in Hawai'i: Analysis of the Statute of Limitations, the Rule Against Splitting Causes of

Action and Nonidentification Theories of Liability. 15 UH L. Rev. 137 (1993).

Interspousal Torts: A Procedural Framework for Hawai'i. 19 UH L. Rev. 377 (1997).

Case Notes

When claim accrues, discussed. 818 F.2d 210 (1987).

Claim against asbestos manufacturer was not time-barred because action accrued when plaintiff had knowledge that defendant's negligence may have caused injury. 871 F.2d 891 (1989).

Counterclaim filed more than two years after accident not barred, where arising from the incident which gave rise to the complaint. 252 F. Supp. 988 (1966).

Not applicable to action for taking and converting personal property. 256 F. Supp. 204, 214 (1966), aff'd 378 F.2d 888 (1974). See also 78 F. Supp. 421 (1947).

Statute of limitations begins to run the moment person discovers or should have discovered the negligent act, the damage, and the causal connection; certification of other plaintiffs' claims as class action did not toll statute of limitations. 611 F. Supp. 1285 (1985).

Where plaintiff knew all that was necessary to trigger the statute of limitations on plaintiff's strict liability claims on date that plaintiff filed worker's compensation claim, plaintiff's strict liability claims were not filed within two years of that date and were accordingly time-barred under this section; defendants' motions for summary judgment on issue of statute of limitations denied as to plaintiff's negligence action, where defendants failed to show that plaintiff had actual or imputed knowledge of defendants' negligence or breach of duty. 854 F. Supp. 702 (1994).

Two-year limit applied to personal injury claims of negligent and intentional infliction of emotional distress and negligence, claims of discriminatory employment practices under §§378-2 and 378-62, 42 U.S.C. §1983 claim, and claim of discrimination under Title IX. Plaintiff's 42 U.S.C. §1983, Title IX, and state law claims barred, where neither the collective bargaining proceedings nor the equal employment opportunity proceedings tolled the statute of limitations. 874 F. Supp. 1095 (1994).

If plaintiff's multiple sclerosis was a separate and distinct disease from optic neuritis or plaintiff's earlier demyelination, plaintiff's cause of action did not accrue until plaintiff discovered or should have discovered that plaintiff had multiple sclerosis and that injections of vaccine,

negligently manufactured by defendant or containing a dangerous defect, caused the multiple sclerosis. 875 F. Supp. 701 (1995).

Retaliatory discharge claim dismissed as untimely where no genuine issue of equitable tolling on basis of mental incapacity found. 938 F. Supp. 1503 (1996).

Accrual of plaintiff's causes of action and tolling of limitations period discussed, where plaintiff's claims for personal injury against defendant were barred by operation of two-year statute of limitations. 945 F. Supp. 1334 (1996).

Where defendant contended that claim for breach of implied covenant of good faith and fair dealing was barred by two-year statute of limitations governing damage to persons and property (§657-7), since there is no element in the cause of action for bad faith that requires a plaintiff to suffer personal injury, it is not in reality a cause of action based upon a "personal injury", and the applicable statute of limitations is six years and is found in the catchall provision of §657-1 (§657-1(4)). 986 F. Supp. 1334 (1997).

It could not be disputed that by the time the underinsured motorist benefits were paid, plaintiff either knew or should have known that defendant's alleged refusal to engage in settlement negotiations caused plaintiff injury; any claims for emotional distress were time-barred. 11 F. Supp. 2d 1204 (1998).

Limitations period applicable to cause of action for bad faith, discussed; where complaint was not filed until almost one year after the limitations period had lapsed, to the extent that complaint alleged a claim for the tort of bad faith denial of benefits, summary judgment granted in favor of defendant as to plaintiff's claim for tort of bad faith. 11 F. Supp. 2d 1204 (1998).

Plaintiff may rely on events which occurred prior to the limitations period in order to establish intentional infliction of emotional distress claim, as long as the incidents are constant and closely related to the violations which occurred within the period of limitations. 75 F. Supp. 2d 1113 (1999).

Where plaintiff alleged violations of 42 U.S.C. §1981 which occurred within two-year statute of limitations period, plaintiff may rely on events which occurred outside the limitations period in order to establish a pattern of conduct and/or intent of defendant. 75 F. Supp. 2d 1113 (1999).

Plaintiff brought forth evidence of a continuing series of conduct which affected plaintiff and plaintiff's work environment; plaintiff's sexual harassment claims may proceed using the evidence, even though much of it predated limitations period; plaintiff may not rely on other proffered evidence because to extent those actions raised claims, statute of limitations had passed. 125 F. Supp. 2d 1224 (2000).

Applying Hawaii's statute of limitations for personal injury claims, which court found was most analogous to plaintiffs' claims under, inter alia, Individuals with Disabilities Education Act, and where limitations period began at conclusion of administrative proceedings, plaintiffs were within limitations period. 141 F. Supp. 2d 1243 (2001).

Plaintiff's 42 U.S.C. §1983 cause of action for false arrest did not accrue while the criminal charges were pending against plaintiff. 165 F. Supp. 2d 1149 (2001).

Two-year statute of limitations applied in Individuals with Disabilities Education Act case, where plaintiff sought only attorney's fees and costs for prevailing at the administrative level, not a substantive review of the administrative proceedings. 234 F. Supp. 2d 1156 (2002).

Where plaintiffs contended that most of their claims were governed by this section, all of plaintiffs' claims were governed by the limitations period established in §663-3; the statute of limitations began to run, as per the terms of §663-3, upon the death of plaintiffs' wife and mother. 396 F. Supp. 2d 1150 (2005).

Plaintiff neglected to file the intentional infliction of emotional distress claim against defendants within the two-year tort statute of limitations; among other things, the charge plaintiff filed with the Equal Employment Opportunity Commission and the Hawaii civil rights commission charge did not toll the statute of limitations for the claim. 468 F. Supp. 2d 1210 (2006).

Where defendants argued that the intentional infliction of emotional distress/negligent infliction of emotional distress claims were time-barred because the time began to run on the date of discharge, there was a triable issue of fact as to when plaintiffs-intervenors discovered the cause of their alleged emotional distress. 535 F. Supp. 2d 1149 (2008).

Whether the appropriate analogous statute of limitations in actions for attorney's fees under the Individuals with Disabilities Education Act was this statute or §657-1(4), discussed. 621 F. Supp. 2d 1013 (2008).

Where defendants argued that the intentional infliction of emotional distress and negligent infliction of emotional distress claims were time-barred, there was a triable issue of fact as to when plaintiffs discovered the cause of their alleged emotional distress; "discovery rule" applied to the statute of limitations for intentional infliction of emotional distress and negligent infliction of emotional distress claims. 795 F. Supp. 2d 1098 (2011).

Applies to trespass on land. 20 H. 237 (1910).

Amendment to complaint concerning punitive damages may be made, when. 30 H. 17 (1927).

Action to cancel release and prevent its use in action for injuries not subject to defense of laches when action for the injuries not barred. 32 H. 936 (1934), aff'd 75 F.2d 74 (1935).

Revival of cause of action by statute, whether intended. 33 H. 379 (1935), reh'g den. 33 H. 409 (1935).

In malpractice action statute begins to run when plaintiff discovers, or acting reasonably should have discovered, defendant's alleged negligence. 50 H. 150, 433 P.2d 220 (1967); 2 H. App. 506, 635 P.2d 244 (1981).

Statute begins to run for negligent injury to real property when the plaintiff knows or should have discovered that an actionable wrong has been committed. 50 H. 397, 441 P.2d 636 (1968).

Under HRCF rule 15(c), claim asserted in amended pleadings after statute has run will not be barred if it arose out of a timely pleaded factual situation. 52 H. 563, 481 P.2d 310 (1971).

Waiver of statute; where one lulls another as by a stipulation into allowing the statute to run out, one cannot assert the statute as a bar. 52 H. 563, 481 P.2d 310 (1971).

Statute of limitations begins to run the moment person discovers or should have discovered the negligent act, the damage, and the causal connection. 65 H. 84, 648 P.2d 689 (1982).

Two-year statute of limitations governs actions brought under 42 U.S.C. §1983 rather than six-year catchall limitations period of §657-1(4). 73 H. 578, 837 P.2d 1247 (1992).

Claim of breach of implied warranty of merchantability for personal injury from pacemaker governed under statute of limitations in §490:2-725 rather than this section. 74 H. 1, 837 P.2d 1273 (1992).

Plaintiff's lack of knowledge regarding a legal duty, the breach of which may have caused plaintiff's injury, did not justify application of "discovery rule"; plaintiff's failure to seek legal advice from an attorney did not toll statute of limitations. 81 H. 391, 917 P.2d 718 (1996).

Where all that had not been discovered by plaintiff was identity of defendant, discovery rule did not apply to toll this section. 82 H. 461, 923 P.2d 403 (1996).

Issue of when childhood sexual abuse victim discovered, or should have discovered, that alleged injuries were caused by defendant's alleged actions was question of fact for jury; reasonable jury could find that victim filed suit within two years of discovering alleged injuries and cause of those injuries. 83 H. 28, 924 P.2d 196 (1996).

Reading this section in pari materia with §1-29, the computation of time under the prescribed two-year statute of limitations would exclude the first day on which the cause of action accrues and include the last day, two years thereafter; thus, plaintiff's complaint, filed on the second anniversary of plaintiff's alleged injury, was "within two years after the cause of action accrued", and therefore, timely. 99 H. 281, 54 P.3d 452 (2002).

Where genuine issues of material fact existed as to whether association of apartment owners, through the use of reasonable diligence, should have discovered the negligent act, the damage, and the causal connection between the two more than two years prior to the initiation of the action, and whether the association exercised reasonable diligence in pursuing its claims, trial court erred in granting summary judgment in favor of defendants on the association's negligence claims based on this section. 115 H. 232, 167 P.3d 225 (2007).

Section 657-5 controls over HRCF rule 5(a); thus, notice of a proposed extension of a judgment pursuant to §657-5 must be provided to the judgment debtor prior to the granting of the extension, even if the debtor is in default and is not required under rule 5(a) to be served with pleadings; although failure to provide notice under this section was error, error was harmless where debtor never appeared to defend debtor's self, had an opportunity to be heard at a HRCF rule 60(b) hearing, and offered no defense on the merits to the original judgment or extension, and thus failed to demonstrate any prejudice. 120 H. 1, 200 P.3d 370 (2008).

The statutory scheme and legislative history of §386-8 indicated that the phrase "except as limited by chapter 657" was not intended to restrict an employee's right to intervene in a lawsuit that was timely filed by his or her employer; thus, employee was not barred by the statute of limitations under this section to intervene in plaintiff insurer's timely filed suit, and the circuit court erred in granting defendant's motion for summary judgment. 126 H. 406, 271 P.3d 1165 (2012).

As action for bad faith against insurer is an independent tort, the proper limitation provision for bringing an action should not be that provided in the insurance policy, but rather that provided in this section, which limits causes of action for torts to two years. 88 H. 442 (App.), 967 P.2d 639 (1998).

Plaintiff's lawsuit for injuries to plaintiff's person while a passenger on defendant's plane was governed and barred by the personal injury statute of limitations embodied in this section notwithstanding that the form of the pleading was a claim in contract. 111 H. 67 (App.), 137 P.3d 381 (2006).

Cited: 978 F.2d 493 (1992); 198 F. Supp. 78, 90 (1961); 22 H. 140, 141 (1914); 24 H. 258 (1918).

Discussed: 792 F. Supp. 2d 1111 (2011).

" **§657-7.3 Medical torts; limitation of actions; time.**

[(a)] No action for injury or death against a chiropractor, clinical laboratory technologist or technician, dentist, naturopathic physician, nurse, nursing home administrator, dispensing optician, optometrist, osteopath, physician or surgeon, physical therapist, podiatrist, psychologist, or veterinarian duly licensed or registered under the laws of the State, or a licensed hospital as the employer of any such person, based upon such person's alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person's practice, shall be brought more than two years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, but in any event not more than six years after the date of the alleged act or omission causing the injury or death. This six-year time limitation shall be tolled for any period during which the person has failed to disclose any act, error, or omission upon which the action is based and which is known to the person.

[(b)] Actions by a minor shall be commenced within six years from the date of the alleged wrongful act except the actions by a minor under the age of ten years shall be commenced within six years or by the minor's tenth birthday, whichever provides a longer period. Such time limitation shall be tolled for any minor for any period during which the parent, guardian, insurer, or health care provider has committed fraud or gross negligence, or has been a party to a collusion in the failure to bring action on behalf of the injured minor for a medical tort. The time limitation shall also be tolled for any period during which the minor's injury or illness alleged to have arisen, in whole or in part, from the alleged wrongful act or omission could not have been discovered through the use of reasonable diligence. [L 1973, c 92, §1; am L 1976, c 219, §17; am L 1977, c 167, §14; gen ch 1985; am L Sp 1986, c 2, §15; am L 2010, c 4, §9]

Case Notes

Claims against doctors were not barred by the statute of limitations; the statute of limitations defense was waived at the time the claims were removed from the medical claim conciliation panel. 299 F. Supp. 2d 1131 (2003).

Statute of limitations begins to run the moment person discovers or should have discovered the negligent act, the damage, and the causal connection. 65 H. 84, 648 P.2d 689 (1982).

Distinguished from "general" personal injury statute of limitations of §657-7. 73 H. 578, 837 P.2d 1247 (1992).

An expert opinion validating the legal basis for a claim is not required in order to trigger running of statute of limitations under this section; section also does not require the procurement of a favorable expert opinion before a cause of action accrues. 89 H. 244, 971 P.2d 717 (1999).

For a cause of action to accrue and the statute of limitations to commence under this section, legal knowledge of defendant's negligence is not required; thus, plaintiff's cause of action accrued when plaintiff had discovered that stroke was caused by defendant's inadequate administration of medication. 89 H. 244, 971 P.2d 717 (1999).

The two-year limitation begins to run when plaintiff discovers or should have discovered the damage, the violation of the duty, and the connection between the violation of the duty and the damage. 1 H. App. 519, 622 P.2d 613 (1981).

Where questions of whether plaintiff should have, using reasonable diligence, discovered the negligence more than two years before filing suit, and whether plaintiff relied on actions by defendants in not pursuing plaintiff's claim were in dispute and thus were matters for the trier of fact to decide, trial court erred in granting summary judgment for defendants. 112 H. 336 (App.), 145 P.3d 879 (2006).

" **§657-7.5 Third-party defendants, time in which plaintiff may amend.** When a defendant, against whom action has been timely brought, brings in a third-party defendant who is or may be liable to the defendant or to the plaintiff for all or part of the plaintiff's claim against the defendant, plaintiff within thirty days after the date of filing of the third-party defendant's answer, may assert against the third-party defendant any claim, arising out of the original transaction or occurrence that is also the subject matter of the third-party plaintiff's claim against the third-party defendant, which would have been timely if the third-party defendant had been joined originally as a defendant, notwithstanding any statutory period of limitations otherwise applicable to plaintiff's claim. Nothing herein shall preclude the plaintiff from asserting any claim which the plaintiff might have asserted without the benefit of this section. [L 1972, c 186, §2; gen ch 1985]

Section does not preclude identification on the record of John Doe defendants after thirty days from the filing of a third-party complaint naming them. 2 H. App. 373, 636 P.2d 1352 (1981).

" **§657-8 Limitation of action for damages based on construction to improve real property.** (a) No action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of any deficiency or neglect in the planning, design, construction, supervision and administering of construction, and observation of construction relating to an improvement to real property shall be commenced more than two years after the cause of action has accrued, but in any event not more than ten years after the date of completion of the improvement.

(b) This section shall not apply to actions for damages against owners or other persons having an interest in the real property or improvement based on their negligent conduct in the repair or maintenance of the improvement or to actions for damages against surveyors for their own errors in boundary surveys. The term "improvement" as used in this section shall have the same meaning as in section 507-41 and the phrase "date of completion" as used in this section shall mean the time when there has been substantial completion of the improvement or the improvement has been abandoned. The filing of an affidavit of publication and notice of completion with the circuit court where the property is situated in compliance with section 507-43(f) shall be prima facie evidence of the date of completion. This section shall not be construed to prevent, limit, or extend any shorter period of limitation applicable to sureties provided for in any contract or bond or any other statute, nor to extend or add to the liability of any surety beyond that for which the surety agreed to be liable by contract or bond.

(c) Nothing in this section shall exclude or limit the liability provisions as set forth in the products liability laws. [L 1967, c 194, §1; HRS §657-8; am L 1972, c 133, §1; am L 1974, c 73, §1; am L 1979, c 185, §1; am L 1980, c 70, §2 and c 232, §34; am L 1983, c 120, §1; am L 1994, c 164, §1]

Cross References

Contractor repair act, see chapter 672E.
Statute of limitations; recovery from contractors recovery fund, see §444-28.

Case Notes

Where defendant argued statute of limitations set forth in pre-1994 version of this section barred plaintiffs' suit, plaintiffs presented sufficient evidence to create genuine issue of material fact as to their claim that statute of limitations should be equitably tolled as a result of defendant's alleged misleading conduct. 930 F. Supp. 1411 (1996).

In granting immunity to certain persons, section prior to 1974 amendment was declared violative of equal protection guaranty. 55 H. 7, 514 P.2d 568 (1973).

Homeowner's suit not barred because rights matured before 1972 amendments took effect. 64 H. 80, 636 P.2d 1348 (1981).

Section held violative of equal protection. 65 H. 26, 647 P.2d 276 (1982).

" **§657-9 Action barred in foreign jurisdiction.** When a cause of action has arisen in any foreign jurisdiction, and by the laws thereof an action thereon cannot there be maintained against a person, by reason of the lapse of time, an action thereon shall not be maintained against the person in this State, except in favor of a domiciled resident thereof, who has held the cause of action from the time it accrued. [CC 1859, §1167; RL 1925, §2646; RL 1935, §3917; RL 1945, §10428; RL 1955, §241-8; HRS §657-9; gen ch 1985]

Case Notes

Enforcement of valid and subsisting foreign judgment. 128 F. Supp. 697 (1955).

Where, pursuant to Philippine case law, relevant Philippine statutes of limitations were tolled as a matter of law, action was brought in this State within the time required under the relevant Philippine statutes of limitations as required by this section. 89 H. 91, 969 P.2d 1209 (1998).

" **§657-10 Special limitations.** This part shall not extend to any action which is, or shall be, limited by any statute to be brought within a shorter time than is herein prescribed; but the action shall be brought within the time limited by the statute. [CC 1859, §1048; RL 1925, §2647; RL 1935, §3918; RL 1945, §10429; RL 1955, §241-9; HRS §657-10]

Cross References

Wrongful death actions, see §663-3.

" **§657-11 Recoveries authorized by federal statute.**

Whenever any federal statute provides for damages or equitable relief and neither the federal statute nor any specific state statute specifies the period within which suit may be brought, the suit, if brought in a state court, shall be commenced within two years from the date the cause of action arises or be thereafter barred. [L 1945, c 174, §1; RL 1955, §241-10; HRS §657-11; am L 1972, c 105, §1(f); am L 1986, c 337, §1]

Case Notes

Does not apply to actions brought under 42 U.S.C. 1983. 749 F.2d 588 (1984).

Applicable to breach of Railway Labor Act; tolling of limitations period. 790 F.2d 727 (1986).

Two-year statute of limitations, rather than six-month catchall statute of limitations in National Labor Relations Act, applied to action brought under employee protection program of Airline Deregulation Act. 940 F.2d 1312 (1991).

Does not apply to action for redress for deprivation of civil rights. 402 F. Supp. 95 (1975).

Section may not apply to claims filed pursuant to SEC Rules 103-5 or §17(a) of the Securities Act of 1933 because no new liability is imposed. 501 F. Supp. 830 (1980).

Limitation period under this section applied because Railway Labor Act "imposes a new liability". 525 F. Supp. 874 (1981).

Unconstitutionally discriminates against actions brought under federal statutes. 574 F. Supp. 1510 (1983).

Section was constitutional as applied to action brought under 42 U.S.C. 1983. 575 F. Supp. 1510 (1983).

Applies to actions brought under Racketeer Influenced and Corrupt Organizations Act. 619 F. Supp. 585 (1985).

Application of statute of limitations for Labor Management Act. 687 F. Supp. 1453 (1988).

Applies to actions brought in state courts; §657-1 was applied to federal action. 751 F. Supp. 1426 (1990).

" **§657-12 REPEALED.** L 1972, c 105, §1(q).

" **§657-13 Infancy, insanity, imprisonment.** If any person entitled to bring any action specified in this part (excepting actions against the sheriff, chief of police, or other officers) is, at the time the cause of action accrued, either:

- (1) Within the age of eighteen years;
- (2) Insane; or

- (3) Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than the person's natural life;

such person shall be at liberty to bring such actions within the respective times limited in this part, after the disability is removed or at any time while the disability exists. [CC 1859, §1039; RL 1925, §2648; RL 1935, §3919; RL 1945, §10430; RL 1955, §241-12; am L 1963, c 13, §1 and c 85, §3; HRS §657-13; am L 1972, c 2, §37(1); gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

Revision Note

Pursuant to §23G-15, in:

- (1) Paragraph (1) "or," deleted; and
- (2) Paragraph (2), punctuation deleted.

Law Journals and Reviews

Tort and Insurance "Reform" in a Common Law Court. 14 UH L. Rev. 55 (1992).

Case Notes

Hybrid §301 Labor Management Relations Act/fair representation claim not tolled by this section. 817 F. Supp. 850 (1992).

Deed of minor may be disaffirmed within reasonable time after majority attained. 30 H. 184 (1927).

Mentally enfeebled person not barred by statute though suit for cancellation of deed more than six years from execution. 31 H. 817, 901 (1931).

Laches is not imputable to one mentally incapacitated to execute valid deed. 31 H. 817 (1931).

Amendment reducing period of infancy, during which statute of limitations is tolled, from twenty to eighteen years had effect of accelerating the date on which the limitation statute commences to run so that action not brought within two years after plaintiff had reached eighteen was barred. 58 H. 101, 564 P.2d 1276 (1977).

Section applies to the limitations period provided in §663-3. 63 H. 273, 626 P.2d 182 (1981).

Not applicable to actions against the State. 72 H. 77, 806 P.2d 957 (1991).

Tolls statute of limitations for tort actions arising out of motor vehicle accidents during victims' minority. 72 H. 377, 819 P.2d 80 (1991).

Considering the definition of insanity and construing summary judgment liberally in favor of non-movant, affidavits of doctors that patient was mentally incompetent to manage patient's legal and business affairs were sufficient to invoke tolling provisions of this section. 89 H. 244, 971 P.2d 717 (1999).

Because the city is neither the sovereign nor the surrogate or alter ego of the sovereign, it is not entitled to sovereign immunity; thus, it is subject to the State's tort laws in the same manner as any private tortfeasor; as this section governs classes of "personal" tort actions, such as "damage to persons or property", the infancy tolling provision of paragraph (1) applies directly to personal injury actions against the city; child was thus able to bring action, but as paragraph (1) did not provide for tolling of parents' derivative actions and they did not timely comply with §46-72, their individual claims were barred. 104 H. 341, 90 P.3d 233 (2004).

Cited: 20 H. 165 (1910); 75 F. Supp. 553, 563 (1948); 198 F. Supp. 78, 91 (1961).

" **§657-14 Disability to exist at accrual of action.** No person shall avail oneself of any disability enumerated in this part, unless the disability existed at the time the right of action accrued. [CC 1859, §1046; RL 1925, §2649; RL 1935, §3920; RL 1945, §10431; RL 1955, §241-13; HRS §657-14; am L 1972, c 105, §1(g); gen ch 1985]

Case Notes

Cited: 29 H. 579, 586 (1927).

" **§657-15 Two or more disabilities.** Where there are two or more such disabilities existing at the time the right of action accrued, the limitations herein prescribed shall not attach until all the disabilities are removed. [CC 1859, §1047; RL 1925, §2650; RL 1935, §3921; RL 1945, §10432; RL 1955, §241-14; HRS §657-15]

" **§§657-16 and 657-17 REPEALED.** L 1976, c 200, pt of §1.

" **§657-18 Extension by absence from State.** If at any time when any cause of action specified in this part or section 663-3 accrues against any person, the person is out of the State, the action may be commenced within the terms respectively limited, after the return of the person into the State, and if, after the cause of action has accrued, the person departs from and resides out of the State, the time of the person's absence shall not be deemed or taken as any part of the time limited for the

commencement of the action. [CC 1859, §1041; RL 1925, §2652; RL 1935, §3923; RL 1945, §10434; RL 1955, §241-17; HRS §657-18; am L 1972, c 105, §1(j); gen ch 1985]

Case Notes

Section did not apply to toll the no-fault statute of limitations where a nonresident motorist defendant was at all times subject to the jurisdiction of Hawaii's courts and amenable to service of process under its long-arm statutes as set forth in §§634-33 and 634-36. 89 H. 1, 967 P.2d 1059 (1998).

By express limitation, this section does not apply to toll the statute of limitations period set forth in §490:2-725. 93 H. 174 (App.), 998 P.2d 55 (2000).

" **§657-19 Extension by injunction.** Whenever the commencement of any action is stayed by an injunction of any court, the time during which the injunction is in force shall not be deemed any portion of the time limited in this part or section 663-3 for the commencement of the action. [CC 1859, §1043; RL 1925, §2653; RL 1935, §3924; RL 1945, §10435; RL 1955, §241-18; HRS §657-19; am L 1972, c 105, §1(k)]

" **§657-20 Extension by fraudulent concealment.** If any person who is liable to any of the actions mentioned in this part or section 663-3, fraudulently conceals the existence of the cause of action or the identity of any person who is liable for the claim from the knowledge of the person entitled to bring the action, the action may be commenced at any time within six years after the person who is entitled to bring the same discovers or should have discovered, the existence of the cause of action or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations. [CC 1859, §1049; RL 1925, §2654; RL 1935, §3925; RL 1945, §10436; RL 1955, §241-19; HRS §657-20; am L 1972, c 105, §1(1)]

Case Notes

Possibility that plaintiffs can show "lulling" or fraudulent concealment is sufficient to avoid summary disposition on statute of limitations defense. 501 F. Supp. 830 (1980).

Applicability of statute of limitations to state securities fraud claims discussed. 758 F. Supp. 1357 (1991).

Where plaintiffs claimed that fraudulent concealment tolled the statute of limitations applicable to their contract claims:

(1) material questions of fact existed regarding the breach of the first alleged agreement; and (2) the count alleging breach of contract under the second alleged agreement was barred by the statute of limitations; plaintiffs had constructive knowledge of their cause of action arising out of the second alleged agreement no later than 1996 and the doctrine of constructive notice applied despite any fiduciary relationship that may have existed. 360 F. Supp. 2d 1122 (2005).

Doctrine of fraudulent concealment was inapplicable, where plaintiffs had not brought forth evidence sufficient to support a finding that defendant's employees took affirmative steps to conceal anything. 396 F. Supp. 2d 1150 (2005).

This section is limited to causes of action mentioned in part I of chapter 657 or §663-3, and therefore does not apply to plaintiff's claim brought pursuant to chapter 480. 777 F. Supp. 2d 1224 (2011).

Plaintiff did not set forth any facts to support a plausible allegation of fraudulent concealment, where plaintiff did not point to conduct by either defendant to conceal anything, including the existence of plaintiff's current causes of action, and failed to allege any acts by defendants to prevent plaintiff from suing in time. Also, the alleged facts that plaintiff contended were concealed were evident on the face of the recorded trustee deed. 992 F. Supp. 2d 1053 (2014).

Construed in connection with contention that nondisclosure amounts to concealment. 44 H. 297, 353 P.2d 820 (1960).

Nature of fraudulent concealment. 63 H. 210, 626 P.2d 173 (1981).

Discussed: 792 F. Supp. 2d 1111 (2011).

" **§657-21 Extension by keeping defendant in ignorance.** When an action is alleged by a plaintiff to have been commenced within the time required by law, and the allegation is put in issue by the defendant, it shall be competent for the defendant to prove, on the trial, that the process issued by the plaintiff was not issued with the intent or in the manner required by law; or that any means whatever were used by the plaintiff, or the plaintiff's attorney, to prevent the service of the writ, or to keep the defendant in ignorance of the issuing thereof. [CC 1859, §1044; RL 1925, §2655; RL 1935, §3926; RL 1945, §10437; RL 1955, §241-20; HRS §657-21; am L 1972, c 105, §1(m); gen ch 1985]

" **[§657-21.5] Extension by sentencing of criminal defendant.** Notwithstanding any law to the contrary, for any victim of a particular crime, for surviving immediate family members of a victim, or for the estate of a victim, the statute of

limitations for any civil cause of action against a person convicted of that crime shall be tolled from the moment the civil cause of action arises until the person convicted of that crime is released from imprisonment, released from parole, or released from probation and is no longer under the jurisdiction of the court for that crime, if:

- (1) The crime upon which the civil action is based is a felony; or
- (2) The victim of the crime upon which the civil action is based is the victim of a "sexually violent offense" or a "criminal offense against a victim who is a minor", as defined by section 846E-1. [L 2002, c 201, §1]

Note

The definitions of "sexually violent offense" and "criminal offense against a victim who is a minor", referred to in paragraph (2), were deleted from §846E-1 by L 2005, c 45, §3(3).

" **§657-22 When process not commencement.** Upon any such matter being established, or upon its appearance in any other way that any process was issued without any intent that it should be served, the process shall not be deemed the commencement of an action within the meaning of this part or section 663-3. [CC 1859, §1045; RL 1925, §2656; RL 1935, §3927; RL 1945, §10438; RL 1955, §241-21; HRS §657-22; am L 1972, c 105, §1(n)]

Case Notes

Where plaintiffs never had original complaint, the only complaint filed within limitations period, served on defendant and had only the first amended complaint served, despite the fact that original complaint was never served, actions by plaintiffs evidenced both an intent to serve original complaint as well as a continuing intent to pursue their cause of action. 848 F. Supp. 1482 (1993).

" **§657-23 Extension while criminal case is pending.** If at any time when any cause of action for recovery of restitution or compensation for damage or injury to a victim of a crime exists, a criminal action is pending which arises out of the same occurrence, the time during which the criminal action is pending shall not be deemed or taken as any part of the time limited for the commencement of the civil action.

As used in this section, a criminal action is pending until the court's jurisdiction in the criminal action is terminated. [L 1986, c 225, §1; am L 1998, c 269, §2]

" **[\$657-24] Periodic payments of damages.** In any action in tort involving the State, any political subdivision of the State, or any governmental agency as a tortfeasor where a final judgment is obtained of more than \$1,000,000, the State, political subdivision, or governmental agency has the option of paying that portion of the award in excess of \$1,000,000 by periodic payments for a period not to exceed five years. The periodic payments shall include interest on the unpaid balance at the rate specified in section 478-3. A proposed periodic payment plan shall be submitted by the State, political subdivision, or governmental agency to the court in a post judgment hearing for final approval. The court shall approve or order modification of the plan based upon the facts and circumstances of the case and the needs of the parties. [L Sp 1986, c 2, §14]

Revision Note

Section "478-3" substituted for "478-2" pursuant to §23G-15.

"PART II. REAL ACTIONS

Law Journals and Reviews

The Statutory Elements of Hawaii's Adverse Possession Law. 14 HBJ, no. 2, at 67 (1978).

§657-31 Twenty years. No person shall commence an action to recover possession of any lands, or make any entry thereon, unless within twenty years after the right to bring the action first accrued. [L 1870, c 22, §1; am L 1898, c 19, §1; RL 1925, §2657; RL 1935, §3928; RL 1945, §10439; RL 1955, §241-30; HRS §657-31; am L 1973, c 26, §4]

Law Journals and Reviews

Beach Access: A Public Right? 23 HBJ, no. 1, at 65 (1991).
Public Beach Access: A Right for All? Opening the Gate to Iroquois Point Beach. 30 UH L. Rev. 495 (2008).

Case Notes

Easement by prescription. 36 H. 692 (1944).

Entry means entry by claimant personally as well as entry through another. 54 H. 488, 510 P.2d 93 (1973).

Exclusivity of possession is essential to claim of adverse possession. 57 H. 172, 552 P.2d 77 (1976).

A tenant in common claiming adverse possession must prove tenant acted in good faith, which in most cases mandates actual notice to tenant's cotenants of tenant's claim. 57 H. 195, 552 P.2d 1380 (1976).

Element of hostility discussed. 60 H. 650, 594 P.2d 128 (1979).

Saving clause in 1973 amendment requires application of prior law's ten-year period of limitations in adverse possession case. 3 H. App. 11, 639 P.2d 1119 (1982).

Miscellaneous. Doctrine of lost grant invoked against State. 25 H. 357 (1920), aff'd 272 F. 856 (1921). As to dower being barred. 6 H. 651 (1887); 15 H. 284 (1903). As to curtesy. 16 H. 432 (1905). May run in favor of married woman. 9 H. 135 (1893). Parol gift of land followed by required period of adverse possession cannot be disturbed. 10 H. 495 (1896). Parol exchange. 4 H. 198 (1879). Foreclosure of mortgage. 14 H. 527 (1902); 15 H. 507 (1904); 17 H. 49 (1905); 19 H. 382 (1909); 20 H. 620 (1911). Deficiency judgment. 20 H. 620 (1911). Term "entry" has common law meaning. 19 H. 681 (1909). Interruption of statute. 22 H. 673 (1915); 30 H. 204 (1927). Running of statute not checked by conveyance to minor. 24 H. 1, 6 (1917). As to cotenant and ouster. 24 H. 361 (1918). Acceptance of deed does not necessarily affect adverse possession. 5 H. 104 (1884); 48 H. 17, 395 P.2d 273 (1964). Acceptance by defendant of Royal Patent in name of plaintiff. 6 H. 390 (1883). Legal presumption of a deed. 24 H. 750 (1919). Basis of statute differs from laches. 25 H. 438 (1920), aff'd 269 F. 751 (1921). Statute distinguished from presumption of lost grant. 25 H. 357 (1920), aff'd 272 F. 577 (1921). Tacking and taxes. 31 H. 108 (1929). Directed verdict, possession less than ten years. 31 H. 436 (1930). Where evidence of adverse possession is clear and undisputed it is error not to direct a verdict. 48 H. 17, 395 P.2d 273 (1964). Fractional interests. 30 H. 100 (1927).

Requirements of adverse possession. 7 H. 590 (1889); 11 H. 518 (1898); 14 H. 321 (1902); 14 H. 330 (1902); 26 H. 809 (1923). Occasional visits to land without residence or occupation held insufficient. 4 H. 207 (1879). Long acquiescence in adverse possession though not a bar till after statutory period held to be significant. 6 H. 700 (1888). Plaintiff in ejectment need not show possession within statutory period if plaintiff shows title and no adverse possession is proved. 7 H. 324 (1888). Landlord and tenant. 12 H. 142

(1899). Konohiki and tenant. 4 H. 259 (1879); 10 H. 166 (1895); 15 H. 124 (1903); 19 H. 484 (1909). As between cotenants. 4 H. 42 (1877); 5 H. 491 (1885); 7 H. 575 (1889); 10 H. 583 (1897); 13 H. 716 (1901); 16 H. 228 (1904); 20 H. 724 (1911); 36 H. 614 (1944); 39 H. 327 (1952). As to infants. 7 H. 421 (1888); 16 H. 228 (1904). Possession by administrator. 4 H. 571 (1883); 4 H. 577 (1883). After administrator's discharge administrator holds realty adverse to the heirs. 6 H. 183 (1876). Claim must be ownership in fee. 16 H. 432 (1905); 18 H. 662 (1907); 19 H. 602 (1909); 22 H. 510 (1915). Claim under defective title. 9 H. 135 (1893). Claim where possession commenced with permission. 4 H. 481 (1882); 29 H. 750 (1927). By more than one person. 31 H. 661 (1930). Recognition of title in another inconsistent with adverse possession. 37 H. 49 (1945). See 33 H. 387 (1935); 34 H. 679 (1938); 34 H. 722 (1938); 36 H. 164 (1942); 39 H. 482 (1952). Prima facie case of constructive adverse possession. 50 H. 369, 440 P.2d 965 (1968).

Exceptions. Does not run against government. 3 H. 635 (1875); 7 H. 421 (1888); 16 H. 652 (1905); 18 H. 649 (1908). Did run against king on private lands. 14 H. 330 (1902); 14 H. 643 (1903). Mental incompetent. 31 H. 817 (1931).

Cited: 3 H. 610, 612 (1875); 3 H. 768, 776 (1877); 5 H. 377, 378 (1885); 5 H. 525 (1886); 6 H. 329, 330 (1882); 6 H. 545 (1884); 6 H. 573 (1885); 7 H. 575, 577 (1889); 8 H. 508, 510 (1893); 10 H. 573, 574 (1897); 11 H. 644, 649 (1899); 11 H. 755, 757 (1899); 14 H. 643, 644 (1903); 16 H. 345, 347 (1904); 18 H. 121, 123 (1906); 21 H. 252, 253 (1912); 31 H. 376, 383 (1930); 31 H. 796, 798 (1931); 32 H. 659, 661 (1933); 48 H. 17, 19, 395 P.2d 273 (1964); 49 H. 537, 553, 425 P.2d 83 (1967); 73 H. 297, 832 P.2d 724 (1992).

" **§657-31.5 Adverse possession.** In an action under this part where the person defending the action claims by adverse possession in excess of the period of limitation, said claim can only be made:

- (1) If the real property which is the subject of the action is five acres or less; and
- (2) Where the person claiming by adverse possession has not asserted any similar claim, in good faith, within the past twenty years; however, this shall not include similar claims made before November 7, 1978.

However, any person defending an action under this part may claim adverse possession if that person's time period of adverse possession of the land exceeded twenty years prior to November 7, 1978, or exceeded other earlier applicable time periods of adverse possession. [L 1979, c 157, §2]

Cross References

Constitutional provisions, see Const. art. XVI, §12.

" **§657-32 How computed.** If the right first accrued to any ancestor or predecessor of the person bringing the action or making the entry, or to any persons from, by, or under whom the person bringing the action or making the entry claims, the twenty years shall be computed from the time when the right first accrued to the ancestor, predecessor, or other persons. [L 1870, c 22, §2; am L 1898, c 19, §2; RL 1925, §2658; RL 1935, §3929; RL 1945, §10440; RL 1955, §241-31; HRS §657-32; am L 1979, c 105, §61; am L 2016, c 55, §34]

Case Notes

Cited: 19 H. 602, 605 (1909).

" **§657-33 Action accrues when.** In the construction of this part, the right to make an entry or commence an action shall be deemed to have first accrued at the following times:

- (1) When any person is disseised, that person's right of entry or action shall be deemed to have accrued at the time of the disseisin;
- (2) When any person claims as heir or devisee of one who died seised, that person's right shall be deemed to have accrued at the time of the death, unless there is an estate by the curtesy or in dower, or some other estate intervening after the death of the ancestor or devisor, in which case that person's right shall be deemed to have accrued when the intermediate estate shall expire, or when it would have expired by its own limitation;
- (3) Where there is an intermediate estate, and in all other cases, where a party claims in remainder, or reversion, that party's right so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof, for which that party might have entered at an earlier time;
- (4) Paragraph (3) shall not prevent any person from entering, when entitled to do so, by reason of any forfeiture or breach of condition, but if a person claims under such a title, that person's right shall

- be deemed to have accrued when the forfeiture was incurred or condition broken; and
- (5) In the cases not otherwise specially provided for, the right shall be deemed to have accrued when the claimant, or the person under whom the claimant claims, first became entitled to the possession of the premises under the title upon which the entry or action is founded. [L 1870, c 22, §3; RL 1925, §2659; RL 1935, §3930; RL 1945, §10441; RL 1955, §241-32; HRS §657-33; am L 2016, c 55, §35]

Case Notes

Remaindermen and life tenants. 18 H. 625 (1908), aff'd, 222 U.S. 285 (1911).

Entry means entry by claimant personally as well as entry through another. 54 H. 489, 510 P.2d 93 (1973).

Cited: 19 H. 602, 605 (1909); 19 H. 681, 683 (1909).

" **§657-33.5 Deregistered land.** In no event shall the period of limitations provided in this part begin prior to the date and time of deregistration for deregistered land. The terms "date and time of deregistration" and "deregistered land" as used in this section shall have the same meaning as in section 501-20. [L 2009, c 120, §4; am L 2012, c 121, §8]

" **§657-34 Disabilities.** If, when right of entry or of action first accrues as aforesaid, the person entitled to the entry or action is within the age of eighteen years, or insane, or imprisoned, such person, or anyone claiming from, by, or under the person, may make the entry or bring the action at any time within five years after the disability is removed, notwithstanding the twenty years before limited in that behalf, have expired. [L 1870, c 22, §4; am L 1898, c 19, §3; RL 1925, §2660; RL 1935, §3931; RL 1945, §10442; RL 1955, §241-33; HRS §657-34; am L 1972, c 2, §37(2) and c 105, §1(o); am L 1979, c 105, §62; gen ch 1985]

Case Notes

Infancy does not affect rule requiring reasonable attention to property and rights. 16 H. 228 (1904).

Disabilities of heirs when statute has started running. 18 H. 662 (1907).

Conveyance to minors. 24 H. 1 (1917).

Disaffirmance by minor. 30 H. 184 (1927).

These exceptions cannot be engrafted on §667-13 to extend period of redemption thereunder. 45 H. 505, 371 P.2d 217 (1962).

Cited: 19 H. 474, 480 (1909).

" **§657-35 Extension of time by death.** If the person first entitled to make the entry or bring the action dies during the continuance of any of the disabilities mentioned in section 657-34, the entry may be made or the action brought by that person's heirs, or any other person claiming from, by, or under the person first entitled to make the entry or bring the action, at any time within five years after that person's death, notwithstanding the twenty years have expired. [L 1870, c 22, §5; am L 1898, c 19, §4; RL 1925, §2661; RL 1935, §3932; RL 1945, §10443; RL 1955, §241-34; HRS §657-35; am L 1972, c 105, §1(p); am L 1979, c 105, §63; am L 2016, c 55, §36]

" **§657-36 Same.** If, when the right of action first accrues, the person entitled thereto is under any of the disabilities mentioned in section 657-34, and dies without having recovered the premises, no further time for making the entry or bringing the action, beyond what is prescribed in section 657-35, shall be allowed by reason of the disability of any other person. [L 1870, c 22, §6; RL 1925, §2662; RL 1935, §3933; RL 1945, §10444; RL 1955, §241-35; HRS §657-36]

Case Notes

Cited: 18 H. 662 (1907).

" **§657-37 REPEALED.** L 1972, c 105, §1(q).

" **§657-38 Possession, interrupting statute.** No person shall be deemed to have been in possession of any lands within the meaning of this part, merely by reason of having made an entry thereon, unless the person has continued in open and peaceable possession of the same for the space of one year after such entry; or unless an action has been commenced upon the entry within one year after ouster. [L 1870, c 22, §7; am L 1909, c 103, §1; RL 1925, §2664; RL 1935, §3935; RL 1945, §10446; RL 1955, §241-37; HRS §657-38; gen ch 1985]

Case Notes

Tacking, privity of estate or title. 31 H. 108 (1929).