

Statutes of Limitations: Kansas

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A Q&A guide to the statutes of limitation in Kansas for several commercial claims. Answers to questions can be compared across several jurisdictions (see Statutes of Limitation: State Q&A Tool (<http://us.practicallaw.com/1-204-8071>)).

ACCOUNT STATED

1. What is the statute of limitations for an account stated claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations is three years (Kan. Stat. Ann. § 60-512; *In re Cognasi*, 2004 WL 90080, *5-6 (Kan. Ct. App. Jan. 16, 2004); *Sheldon Grain & Feed Co. v. Schuetz*, 483 P.2d 1033, 1035 (Kan. 1971)).

ACCRUAL DATE

The limitations period starts to run:

- Against each item separately and not against the whole balance due, if the account is not an open and running account (*In re Cognasi*, 2004 WL 90080, at *6).
- If the account is a mutual, open, and running account:
 - against the balance due and not separately against each item; and
 - from the time the last item is rightfully credited to the party against whom the balance is due.
 (*Sheldon Grain & Feed Co.*, 483 P.2d at 1035.)

ANTITRUST

2. What is the statute of limitations for an antitrust claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations is three years for a civil remedy under the Kansas Restraint of Trade Act (KRTA) and applies to both full

consideration and treble damages claims (Kan. Stat. Ann. §§ 50-101 to 50-1,105; Kan. Stat. Ann. § 60-512(2); *O'Brien v. Leegin Creative Leather Prods., Inc.*, 277 P.3d 1062, 1086 (Kan. 2012)).

ACCRUAL DATE

The limitations period most likely starts to run when the alleged conduct was committed (*NL Indus., Inc. v. Gulf & W. Indus., Inc.*, 650 F. Supp. 1115, 1134 (D. Kan. 1986)).

Claimants have asserted that a cause of action accrues from the discovery of the conduct constituting the violation of the KRTA. However, Kansas courts have not directly addressed whether the discovery rule applies or whether a claim accrues when the conduct was committed (*Seaboard Corp. v. Marsh Inc.*, 284 P.3d 314, 317-18 (Kan. 2012); *Farmland Nat'l Beef Packing Co., L.P. v. Stone Container Corp.*, 2006 WL 2356958, at *1-2 (D. Kan. Aug. 3, 2006); *Four B Corp. v. Daicel Chem. Indus., Ltd.*, 253 F. Supp. 2d 1147, 1156 (D. Kan. 2003)). For more information on the discovery rule, see Question 24: Discovery Rule.

BREACH OF CONTRACT

3. What is the statute of limitations for a breach of contract claim in your jurisdiction?

LIMITATIONS PERIOD

The statutes of limitation are:

- Five years for express contracts, including agreements, contracts, or promises in writing (Kan. Stat. Ann. § 60-511(1)).
- Three years for oral contracts, including expressed or implied obligations or liabilities that are not in writing (Kan. Stat. Ann. § 60-512(1)).
- Four years for a Uniform Commercial Code breach of contract claim (Kan. Stat. Ann. § 84-2-725(1)).

ACCRUAL DATE

The limitations period starts to run when the contract is breached, not when the breach or harm is discovered (*Nelson v. Nelson*, 162 P.3d 43, 56 (Kan. Ct. App. 2007); *Voth v. Chrysler Motor Corp.*, 545 P.2d 371, 377 (Kan. 1976); *Wolf v. Brungardt*, 524 P.2d 726, 732 (Kan. 1974);

Pizel v. Zuspahn, 795 P.2d 42, 54 (Kan. 1990), modified on other grounds by 247 Kan. 699 (1990); *Freeto Constr. Co. v. Am. Hoist & Derrick Co.*, 203 Kan. 741, 746 (Kan. 1969); *Ware v. Christenberry*, 637 P.2d 452, 455 (Kan. Ct. App. 1981)).

BREACH OF FIDUCIARY DUTY

4. What is the statute of limitations for a breach of fiduciary duty claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations is two years (Kan. Stat. Ann. § 60-513(a)(4); *Bold v. Spitcaufsky*, 942 P.2d 652, 654 (Kan. Ct. App. 1997); *Resolution Trust Corp. v. Scaletty*, 891 P.2d 1110, 1114 (Kan. 1995)).

ACCRUAL DATE

The limitations period starts to run when the act giving rise to the cause of action first causes substantial injury (*Bold*, 942 P.2d at 654-656; Kan. Stat. Ann. § 60-513(b)). In Kansas, the doctrine of adverse domination applies in determining when injury to a corporation by its directors is readily ascertainable by the corporation (*Resolution Trust Corp.*, 891 P.2d at 1116). This doctrine tolls the statute of limitations when the directors or officers charged with wrongful conduct dominate the board of the corporation and do not induce the corporation to sue (*Resolution Trust Corp.*, 891 P.2d at 1112). A disinterested majority of nonculpable directors is necessary to trigger the running of the limitations period (*Resolution Trust Corp. v. Fleischer*, 890 F. Supp. 972, 976 (D. Kan. 1995)).

BREACH OF WARRANTY

5. What is the statute of limitations for a breach of warranty claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations is four years for contracts of sale governed by the Uniform Commercial Code, but may be reduced to no less than one year by the parties in their original agreement (Kan. Stat. Ann. § 84-2-725(1); *Memorial Hosp. v. Carrier Corp.*, 844 F. Supp. 712, 715 (D. Kan. 1994)).

ACCRUAL DATE

The limitations period starts to run when the breach occurs, regardless of the injured party's lack of knowledge of the breach (Kan. Stat. Ann. § 84-2-725(2); *Memorial Hosp.*, 844 F. Supp. at 715).

Kansas provides a six-month savings statute. If a timely action is terminated to leave available a remedy by another action for the same breach:

- The other action may begin after expiration of the limitations period and within six months after the termination of the first action.
- The termination cannot result from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(Kan. Stat. Ann. § 84-2-725(3)).

This statute does not affect the law on tolling of the statute of limitations (Kan. Stat. Ann. § 84-2-725(4)).

CONSUMER PROTECTION STATUTES

6. What is the statute of limitations for a consumer protection claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations for an action for civil penalty or actual damages is three years (Kan. Stat. Ann. § 60-512(2); *Alexander v. Certified Master Builders Corp.*, 1 P.3d 899, 908 (Kan. 2000); *Campbell v. Hubbard*, 201 P.3d 702, 706 (Kan. Ct. App. 2008)).

ACCRUAL DATE

The limitations period starts to run when the violation occurs. There is no additional period provided to discover the claim or assess the damages before the limitations period begins to run. (*Campbell*, 201 P.3d at 706.)

CONVERSION

7. What is the statute of limitations for a conversion claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations is two years (Kan. Stat. Ann. § 60-513(a)(2); *N. Natural Gas Co. v. Nash Oil & Gas, Inc.*, 526 F.3d 626, 629-30 (10th Cir. 2008)).

ACCRUAL DATE

The limitations period starts to run when the fact of injury becomes reasonably ascertainable to the injured party (*N. Natural Gas Co.*, 526 F.3d at 630; *Clark Jewelers v. Satterthwaite*, 662 P.2d 1301, 1304 (Kan. Ct. App. 1983)).

"Reasonably ascertainable" means that:

- A plaintiff has the obligation to reasonably investigate available sources containing the facts of the injury and its wrongful causation.
- Actual knowledge is unnecessary.

(*N. Natural Gas Co.*, 526 F.3d at 630.)

EMPLOYMENT MATTERS

8. What is the statute of limitations for employment matters in your jurisdiction?

LIMITATIONS PERIOD

The statutes of limitation are:

- Three years for claims under the Kansas Wage Payment Act (KWPA) based on verbal employment agreements (Kan. Stat. Ann. § 60-512; *Beckman v. Kan. Dept. of Human Res.*, 43 P.3d 891, 895 (Kan. Ct. App. 2002)).

- Two years for constructive discharge actions (Kan. Stat. Ann. § 60-513(a)(4); *Whye v. City Council of Topeka*, 2004 WL 422045, at *3 (Kan. Ct. App. Mar. 5, 2004)).
- Determined by the federal enforcement structure for employment discrimination claims under Title VII of the Civil Rights Act of 1964. The federal procedural framework provides a statute of limitations, with the "benchmark" measured not by an end date but by "the commencement of the proceeding before the administrative body." (*E.E.O.C. v. W.H. Braum, Inc.*, 347 F.3d 1192, 1197 (10th Cir. 2003)).
- Three years for a wrongful discharge claim based on liability created by a statute (Kan. Stat. Ann. § 60-512(2); *Wright v. Kan. Water Office*, 881 P.2d 567, 570 (Kan. 1994)).
- Two years for wrongful or retaliatory discharge claims (Kan. Stat. Ann. § 60-513(a)(4); *Miller v. Foulston, Siefkin, Powers & Eberhardt*, 790 P.2d 404, 415 (Kan. 1990); *Myers v. Colgate-Palmolive Co.*, 102 F. Supp. 2d 1208, 1225 (D. Kan. 2000)) and for an action under Section 1983 of the Civil Rights Act of 1964 (Kan. Stat. Ann. § 60-513(a)(4); *Swinehart v. City of Ottawa*, 943 P.2d 942, 945 (Kan. Ct. App. 1997)).
- Six months for claims brought under the Kansas Act Against Discrimination (KAAD), which must be filed with the Kansas Human Rights Commission (KHRC) (Kan. Stat. Ann. § 44-1005(i)).
- One year for discharging or threatening to discharge an employee in connection with jury service (Kan. Stat. Ann. § 60-514(d)).

ACCRUAL DATE

The limitations period starts to run when:

- The right to maintain a suit arises or there is a demand capable of present enforcement for claims under the KWPA. There must be a right, a duty, and a default. (*Beckman*, 43 P.3d at 895.)
- For wrongful discharge claims, the plaintiff knows or is certain about the termination (*Whye*, 2004 WL 422045 at *3). The statute of limitations is not extended if the termination is effective on a later date and the employee continues to receive payment until the later date (*Whye*, 2004 WL 422045 at *3).
- For employment discrimination claims under Title VII of the Civil Rights Act of 1964:
 - charges are timely filed with the Equal Employment Opportunity Commission within 180 days of the alleged unlawful employment practice (42 U.S.C. § 2000e-5(e)(1); 42 U.S.C. § 12117(a); *Douglass v. Gen. Motors Corp.*, 368 F. Supp. 2d 1220, 1229 (D. Kan. 2005)); and
 - the lawsuit is filed within 90 days of receipt of notice of right to sue (*Lohf v. Runyon*, 999 F. Supp. 1430, 1439 (D. Kan. 1998)).
- The facts supporting a cause of action are or should be apparent to the plaintiff for claims under Section 1983 of the Civil Rights Act of 1964 (*McClain v. Roberts*, 2013 WL 3970215 at *2 (Kan. Ct. App. 2013)).
- The last act of discrimination occurs for claims of continuing pattern or practice of discrimination under the KAAD (Kan. Stat. Ann. § 44-1005(i)). If the claim is properly filed with the KHRC, the employee has 45 days from receiving a right-to-sue letter to file a lawsuit (Kan. Stat. Ann. § 44-1021(a)).

- An employee is discharged or threatened to be discharged, for discharge claims in connection with jury service (Kan. Stat. Ann. § 60-514(d)).

ENFORCEMENT OF JUDGMENTS

9. What is the statute of limitations for enforcing a judgment in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations is five years (Kan. Stat. Ann. § 60-2403(a)(1)).

ACCRUAL DATE

The limitations period starts to run from the date of a judgment's entry in any court of record in Kansas (Kan. Stat. Ann. § 60-2403(a)(1)). A judgment becomes a lien on the debtor's real estate from the first day of the term in which it is rendered and does not become dormant or stop operating as a lien until five years have expired (*Casey v. Plake*, 244 P.3d 689, 691 (Kan. Ct. App. 2010); see *Cramer v. Iler*, 66 P. 617 (Kan. 1901)). A stay or prohibition on a judgment's enforcement suspends the time in which action must be taken to prevent the dormancy of a judgment (Kan. Stat. Ann. § 60-2403(c); *Casey*, 244 P.3d at 691-692).

FRAUD

10. What is the statute of limitations for a fraud claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations is two years (Kan. Stat. Ann. § 60-513(a)(3)).

ACCRUAL DATE

The limitations period starts to run when the fraud is discovered (Kan. Stat. Ann. § 60-513(a)(3)). Additionally, the period does not accrue until either:

- There is substantial injury.
- The fact of injury becomes reasonably ascertainable to the injured party.

An action may not be filed more than ten years after the time of the act giving rise to the cause of action. (Kan. Stat. Ann. § 60-513(b).)

Kansas law provides that fraud is discovered:

- At the time of actual discovery.
- When the fraud could have been discovered with reasonable diligence.

(*Waite v. Adler*, 716 P.2d 524, 527 (Kan. 1986).)

FRAUDULENT CONCEALMENT

11. What is the statute of limitations for a fraudulent concealment claim in your jurisdiction?

LIMITATIONS PERIOD

The limitations period for fraudulent concealment is the same as fraud, see Question 10: Limitations Period.

ACCRUAL DATE

The accrual date for fraudulent concealment is the same as fraud, Question 10: Accrual Date.

INSURANCE BAD FAITH**12. What is the statute of limitations for an insurance bad faith claim in your jurisdiction?****LIMITATIONS PERIOD**

Kansas courts do not recognize the tort of bad faith against an insurance company by an aggrieved insured individual in a first-party relationship. Kansas courts have explained there are sufficient statutory remedies to protect the insured, including Section 40-3111 of the Kansas Statutes Annotated, which provides attorneys' fees if an insurer unreasonably either:

- Refuses payment.
- Delays payment.

(*Patterson v. Allstate Ins. Co.*, 75 P.3d 763, 766 (Kan. Ct. App. 2003).)

However, a liability insurer owes a duty arising out of the contract to act in good faith and without negligence to the insured (*Assoc. Wholesale Grocers, Inc. v. Americold Corp.*, 934 P.2d 65, 89 (Kan. 1997)).

The statute of limitations is five years for breach of written contract claims (Kan. Stat. Ann. § 60-511). The statute of limitations is two years when the insured individual brings a claim based on an independent tort (Kan. Stat. Ann. § 60-513).

ACCRUAL DATE

For a contractually based cause of action for a bad faith or negligent failure to settle a claim, the limitations period starts to run when there is a final determination of the insured's liability and the claimant's damages, including resolution of any appeals (*Nungesser v. Bryant*, 153 P.3d 1277, 1286 (Kan. 2007)).

NEGLIGENCE**13. What is the statute of limitations for a negligence claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is two years (Kan. Stat. Ann. § 60-513(a)(4); *Moss v. Mamalis*, 138 P.3d 380, 384 (Kan. Ct. App. 2006)).

ACCRUAL DATE

The limitations period generally starts to run when either:

- The negligent act first causes substantial injury.
- The fact of injury becomes reasonably ascertainable to the injured party.

(Kan. Stat. Ann. § 60-513(b); *Michaelis v. Farrell*, 296 P.3d 439, 443-44 (Kan. Ct. App. 2013).)

An action may not be filed more than ten years after the act giving rise to the cause of action (Kan. Stat. Ann. § 60-513(b)).

The limitations period starts to run for:

- Professional services by a health care provider, when:
 - the act giving rise to the cause of action occurs; or
 - the fact of injury becomes reasonably ascertainable to the injured party, but an action cannot be filed more than four years after the date of the negligent act.

(Kan. Stat. Ann. § 60-513(c).)

- A negligence cause of action by a corporation against an officer or director of the corporation, when:
 - the negligent act first causes substantial injury; or
 - the fact of injury becomes reasonably ascertainable to the injured party, but an action cannot be filed more than five years after the date of the negligent act.

(Kan. Stat. Ann. § 60-513(d).)

PRODUCTS LIABILITY**14. What is the statute of limitations for a products liability claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is two years (Kan. Stat. Ann. §§ 60-513(a)(4) and 60-3303(c)). The Kansas Product Liability Act applies to all legal theories of product liability including negligence, breach of express or implied warranty and breach or failure to discharge duty to warn or instruct (Kan. Stat. Ann. §§ 60-513 and 60-3302(c); *Pedro v. Armour Swift-Eckrich*, 118 F. Supp. 2d 1155, 1158-59 (D. Kan. 2000)).

ACCRUAL DATE

The limitations period starts to run when:

- The act giving rise to the cause of action first causes substantial injury.
- The fact of injury becomes reasonably ascertainable to the injured party, but an action cannot be filed more than ten years after the act giving rise to the cause of action.

(Kan. Stat. Ann. § 60-513(b).)

SHAREHOLDER DERIVATIVE SUITS**15. What is the statute of limitations for a shareholder derivative suit in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is two years for actions based on breach of fiduciary duty or fraud (Kan. Stat. Ann. § 60-513(a); *Oberhelman v. Barnes Inv. Corp.*, 690 P.2d 1343, 1352 (Kan. 1984)).

ACCRUAL DATE

The limitations period starts to run when the injury becomes reasonably ascertainable to the injured party (Kan. Stat. Ann. § 60-513(b)-(d); *Schmidt v. Farm Credit Servs.*, 977 F.2d 511, 516 (10th Cir. 1992); *Oberhelman*, 690 P.2d. at 1351-1353).

THIRD-PARTY CONTRIBUTION**16. What is the statute of limitations for a third-party contribution claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is three years (Kan. Stat. Ann. § 60-512; *Kee v. Lofton*, 737 P.2d 55 (Kan. Ct. App. 1987)).

ACCRUAL DATE

The limitations period starts to run separately on the date each payment is made after the guarantor pays his fair share of the debt. A guarantor cannot seek contribution until he has paid more than his share of common obligations. (*Kee*, 737 P.2d at 59.)

TORTIOUS INTERFERENCE WITH CONTRACT RIGHTS**17. What is the statute of limitations for a claim of tortious interference with contract rights or a business relationship in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is two years (Kan. Stat. Ann. § 60-513(a)). However, for claims alleging the same facts as defamation, a one-year limitations period applies (*Meyer Land & Cattle Co. v. Lincoln Cnty. Conservation Dist.*, 31 P.3d, 970, 976-77).

ACCRUAL DATE

The limitations period starts to run when either:

- The act giving rise to the cause of action first causes substantial injury.
- The fact of injury becomes reasonably ascertainable to the injured party.

(Kan. Stat. Ann. § 60-513(b); *Phillips USA, Inc. v. Allflex USA, Inc.*, 1996 WL 80448, at *6 (10th Cir. Feb. 26, 1996).)

TRADE SECRET MISAPPROPRIATION**18. What is the statute of limitations for a trade secret misappropriation claim in your jurisdiction?****LIMITATIONS PERIOD**

The statute of limitations is three years (Kan. Stat. Ann. § 60-3325; *McCaffree Fin. Corp. v. Nunnink*, 847 P.2d 1321, 1327 (Kan. Ct. App. 1993)).

ACCRUAL DATE

The limitations period starts to run when misappropriation is discovered or should have been discovered by reasonable

diligence (Kan. Stat. Ann. § 60-3325; *McCaffree*, 847 P.2d at 1330). A continuing misappropriation constitutes a single claim (Kan. Stat. Ann. § 60-3325).

TRADEMARK INFRINGEMENT**19. What is the statute of limitations for a trademark infringement claim in your jurisdiction?****LIMITATIONS PERIOD**

The Revised Kansas Trademark Act does not contain an express statute of limitations provision (Kan. Stat. Ann. §§ 81-201 to 81-220). A trademark infringement claim could arguably fall under a three-year statute of limitations for "[a]n action [on] a liability created by a statute other than a penalty or forfeiture" (Kan. Stat. Ann. § 60-512(2)). For Lanham Trademark Act (Lanham Act) claims, Kansas courts generally apply the limitations period for the most analogous state law cause of action (*United States v. Foote*, 238 F. Supp. 2d 1271, 1276 (D. Kan. 2002)). In *Manildra Milling Corp. v. Ogilvie Mills, Inc.*, the court found the statute of limitations to be two years, (746 F. Supp. 40, 43 (D. Kan. 1990); Kan. Stat. Ann. § 60-513(a)(3)).

Because Kansas case law is uncertain on this issue and *Manildra* provides no analysis regarding the two-year limitations period, the facts of a case should be analyzed in determining whether a Lanham Act claim in Kansas could fall under a three-year limitations period for liabilities created by statute (746 F. Supp. at 43; Kan. Stat. Ann. § 60-512).

ACCRUAL DATE

Only one case in Kansas has addressed the accrual date. The *Manildra* court found that the limitations period does not start to run on a continuing wrong until the wrong is "over and done with" (746 F. Supp. at 43). However, Kansas courts generally have not extended the continuing wrong theory beyond facts involving fraudulent concealment (*United Cities Gas Co. v. Brock Expl. Co.*, 984 F. Supp. 1379, 1389 (D. Kan. 1997)).

UNFAIR COMPETITION**20. What is the statute of limitations for an unfair competition claim in your jurisdiction?****LIMITATIONS PERIOD**

Kansas law does not specifically discuss a limitations period for unfair competition claims. However, an unfair competition claim may be made under the Lanham Trademark Act (15 U.S.C. § 1125(a); *Manildra*, 746 F. Supp. at 41). See Question 19: Trademark Infringement for a discussion of the limitations period. Courts may apply trade secret misappropriation limitations periods for unfair competition claims, depending on the alleged underlying facts. See Question 18: Trade Secret Misappropriation for a discussion of the limitations period.

ACCRUAL DATE

Kansas law does not specifically discuss the accrual date for unfair competition claims. An unfair competition claim made under

the Lanham Act may have the same accrual date as trademark infringement claims (see Question 19: Trademark Infringement). Unfair competition claims related to trade secret misappropriation may have the same accrual date as trade secret misappropriation claims, depending on the alleged underlying facts. See Question 18: Trade Secret Misappropriation.

UNJUST ENRICHMENT

21. What is the statute of limitations for an unjust enrichment claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations is three years (Kan. Stat. Ann. § 60-512(1); *N. Natural Gas Co.*, 526 F.3d at 630).

ACCRUAL DATE

The limitations period starts to run at the earliest time the plaintiff can maintain legal action based on satisfying all the elements of unjust enrichment (*Estate of Draper v. Bank of Am.*, N.A., 205 P.3d 698, 715 (Kan. 2009)).

Unjust enrichment requires that:

- The defendant received a benefit.
- The defendant retained the benefit.
- Under the circumstances, the defendant's retention of the benefit is unjust.

(*Draper*, 205 P.3d at 715.)

Action generally accrues when either:

- A request by the plaintiff for the return of the property is made.
- Payment is made to or property is received by the defendant.

(*Draper*, 205 P.3d at 715.)

WRONGFUL DEATH & SURVIVAL

22. What is the statute of limitations for a wrongful death and survival claim in your jurisdiction?

LIMITATIONS PERIOD

The statute of limitations is two years (Kan. Stat. Ann. § 60-513(a)(5)). Survival actions must be filed within:

- Two years after the cause of action arose.
- One year after death under Section 60-515(a) of the Kansas Statutes Annotated, if the action is not barred at death.

(*Martin v. Naik*, 300 P.3d 625, 629, 637 (Kan. 2013).)

ACCRUAL DATE

The limitations period starts to run on the date of death unless the information from which the fact of death or negligence can be determined was concealed, altered, falsified, inaccurate, or misrepresented (Kan. Stat. Ann. § 60-513(a)(5); *Martin*, 300 P.3d at 634; *Dreiling v. Davis*, 176 P.3d 197, 199 (Kan. Ct. App. 2008)).

In determining when the limitations period starts to run, a wrongful death plaintiff is expected to have constructive knowledge of information available by a reasonable investigation of sources containing the facts of the death and its wrongful causation (Kan. Stat. Ann. § 60-513(a)(5); *Dreiling*, 176 P.3d at 201). An action may not be filed more than ten years after the negligent act occurred (Kan. Stat. Ann. § 60-513(b)).

A survival action accrues when either:

- The act giving rise to the cause of action first causes substantial injury.
- The fact of injury becomes reasonably ascertainable to the injured party, but in no event may an action be filed more than ten years after the defendant committed the act.

(Kan. Stat. Ann. § 60-513(b); *Martin*, 300 P.3d at 636-37.)

OTHER COMMERCIAL CAUSES OF ACTION

23. Please describe any other statutes of limitations for commercial causes of action in your jurisdiction of which practitioners should be aware.

SLANDER

Limitations Period

The statute of limitations is one year (Kan. Stat. Ann. § 60-514(a); *Meyer Land & Cattle Co.*, 31 P.3d at 974-75; *Taylor v. Int'l Union of Elec., Elec., Salaried, Mach. & Furniture Workers*, 968 P.2d 685, 691-92 (Kan. Ct. App. 1998)).

Accrual Date

The limitations period starts to run on the date the alleged defamatory statement is uttered or published. It is immaterial when the claimant actually learned of the utterance or publication. (*Stephens v. Van Arsdale*, 608 P.2d 972, 986 (Kan. 1980); *Rinsley v. Brandt*, 446 F. Supp. 850, 853 (D. Kan. 1977); *Geolas v. Boy Scouts of Am.*, 23 F. Supp. 2d 1254, 1258 (D. Kan. 1998).)

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Limitations Period

The statute of limitations is five years (Kan. Stat. Ann. § 60-511(1); *Law v. Law Co. Bldg. Assocs.*, 210 P.3d 676, 683 (Kan. Ct. App. 2009), rev'd on other grounds, 289 P.3d 1066 (Kan. 2012)).

Accrual Date

The limitations period starts to run on the date of breach (*Law*, 210 P.3d at 683, rev'd on other grounds, 289 P.3d 1066).

BREACH OF TRUST AGREEMENT

Limitations Period

The statutes of limitation are:

- One year if a report disclosing a potential claim and the time for starting a proceeding is sent to the trust beneficiary.

- Two years if Section 58a-1005(a) of the Kansas Statutes Annotated does not apply and if:

- the trustee is removed, resigns, or dies;
- the beneficiary's interest in the trust is terminated; or
- the trust is terminated.

(Kan. Stat. Ann. § 58a-1005.)

Accrual Date

The limitations period starts to run when the beneficiary or a representative of the beneficiary is sent a report adequately disclosing a potential claim for breach of trust and time allowed for beginning a proceeding. The statute of limitations does not begin to run against a beneficiary who waives the furnishing of a report. (Kan. Stat. Ann. § 58a-1005.)

Otherwise, the limitations period runs when:

- The trustee is removed, resigns, or dies.
- The beneficiary's interest in the trust is eliminated.
- The trust is terminated.

(Kan. Stat. Ann. § 58a-1005(c).)

LEGAL MALPRACTICE

Limitations Period

The statute of limitations for actions based on negligence or breach of fiduciary duty is two years (Kan. Stat. Ann. § 60-513(a)(4)). A claim based on breach of contract is:

- Five years if written.
- Three years for oral contracts, including those contracts in which part of the agreement is oral or dependent on implied promises.

(*Turner & Boisseau v. Nationwide Mut. Ins. Co.*, 944 F. Supp. 842, 846 (1996).)

A plaintiff may not plead a tort action as a contract action or vice versa to circumvent a statute of limitations defense (*Jeanes v. Bank of Am., N.A.*, 191 P.3d 325, 330 (Kan. Ct. App. 2008)).

Accrual Date

The limitations period starts to run when any of the following occurs:

- The lawyer's negligent act or omission occurs, known as the occurrence rule.
- The client suffers appreciable harm or actual damage as a consequence of his lawyer's conduct, known as the damages rule.
- The client discovers, or reasonably should have discovered, the material facts essential to his cause of action against the attorney, known as the discovery rule.
- The attorney-client relationship is terminated, known as the continuous representation rule.

(*Jeanes v. Bank of Am., N.A.*, 295 P.3d 1045, 1049 (Kan. 2013).)

The limitations period generally runs when a fact of injury becomes reasonably ascertainable to the injured party (*Jeanes*, 295 P.3d at 1048-49).

For claims based in negligence or breach of fiduciary duty, the limitations period runs when either:

- The defendant's action first causes substantial injury.
- The fact of injury becomes reasonably ascertainable to the injured party.

(Kan. Stat. Ann. § 60-513(b).)

LIBEL

Limitations Period

The statute of limitations is one year (Kan. Stat. Ann. § 60-514(a)).

Accrual Date

The limitations period starts to run when the defamatory statement is published (*Stephens v. Van Arsdale*, 608 P.2d 972, 986 (Kan. 1980); *Rinsley v. Brandt*, 446 F. Supp. 850, 853 (D. Kan. 1977)). For defamation claims, the statute of limitations starts to run from the date the alleged defamatory statement is uttered or published. It is immaterial when the claimant actually learned of the utterance or publication (*Geolas v. Boy Scouts of Am.*, 23 F. Supp. 2d at 1258).

MEDICAL MALPRACTICE

Limitations Period

The statute of limitations is two years (Kan. Stat. Ann. § 60-513(a)(7); *Dreiling*, 176 P.3d at 200).

Accrual Period

A limitations period starts to run when the act giving rise to the cause of action occurs, but if the fact of injury is not reasonably ascertainable until some time after the initial act, the limitations period does not start until the fact of injury becomes reasonably ascertainable to the injured party. However, a party cannot bring an action more than four years after the act giving rise to the cause of action occurs (Kan. Stat. Ann. § 60-513(c); *Dreiling*, 176 P.3d at 201).

"Reasonably ascertainable" does not mean "actual knowledge," but a plaintiff must reasonably investigate available sources (*Davidson v. Denning*, 914 P.2d 936, 948 (Kan. 1996)).

Minors must bring a cause of action within one year of reaching the age of majority and no more than eight years after the time of the act giving rise to the cause of action (Kan. Stat. Ann. § 60-515(a); *Bonin v. Vannaman*, 929 P.2d 754, 761 (Kan. 1996)).

SPECIAL RULES AND EXCEPTIONS

24. Please list any special rules and exceptions that may toll or otherwise affect any of the statutes of limitations in the previous questions.

Kansas has special rules and exceptions that may toll or otherwise affect any of the statutes of limitations described previously. Depending on the cause of action and facts of the case, one or more of the following rules may affect the running of the statute of limitations.

BORROWING STATUTE FOR ACTIONS ORIGINATING IN ANOTHER STATE

If the cause of action arises in another state or country and cannot be maintained in that state or country because of a lapse of time, no action can be maintained in this state except in favor of the party who is a Kansas resident and has held the cause of action from the time it accrued (Kan. Stat. Ann. § 60-516).

CATCHALL

The Kansas "catchall" statute provides that an action for relief, other than the recovery of real property not provided for in Section 60-511(5) of the Kansas Statutes Annotated, must be brought within five years.

CLASS ACTION TOLLING

Commencing a class action suspends the applicable statute of limitations for all parties who would be class members if the suit were continued as a class action (*Farmland*, 2006 WL 2356958, at *2; *Waltrip v. Sidwell Corp.*, 678 P.2d 128, 131-32 (Kan. 1984)). The statute of limitations remains tolled until class certification is denied to all members of the punitive class. If class certification is denied, any class member then has a right to file a suit of their own or to intervene as a plaintiff in a pending action. (*Farmland*, 2006 WL 2356958, at *2.)

DEFENDANT'S ABSENCE FROM THE STATE OR CONCEALMENT

If a defendant departs a state or conceals himself, the limitations period starts to run when the defendant comes into the state. The statute of limitations may be tolled for the time after the cause of action accrues that the defendant:

- Departs Kansas.
- Conceals himself.

(Kan. Stat. Ann. § 60-517.)

The limitations period is not extended if the location of a defendant is known and service of summons can be made (Kan. Stat. Ann. § 60-517).

Tolling the statute of limitations requires the defendant to be beyond the reach of process from courts (*Underhill v. Thompson*, 158 P.3d 987, 993 (Kan. Ct. App. 2007)). It is not concealment if the plaintiff is merely unable to locate the defendant and the defendant has made no attempt to conceal himself (Kan. Stat. Ann. § 60-517; *Moore v. Luther ex rel. Luther*, 291 F. Supp. 2d 1194, 1200 (D. Kan. 2003)).

DISCOVERY RULE

The limitations period starts to run in a tort action when an act first causes substantial injury. Kansas courts have interpreted "substantial injury" to mean "actionable injury," requiring both the act and the injury to be reasonably ascertainable by the injured person. "Reasonably ascertainable" suggests an objective standard based on an investigation of the surrounding circumstances. The limitations period begins when the plaintiff has reason to suspect a negligent act and information exists to determine a negligent act has occurred. (Kan. Stat. Ann. § 60-513(b); *Michaelis*, 296 P.3d at 444-445.)

EQUITABLE TOLLING

Equitable estoppel may bar the statute of limitations if the defendant commits an action to affirmatively induce the plaintiff to delay bringing an action (*Dunn v. Dunn*, 281 P.3d 540, 549 (Kan. Ct. App. 2012)). For example, a common fact in these cases is conduct by a party lulling the other party into a false sense of security, thereby delaying the filing of suit until the statute has run. Equitable estoppel due to defendant's silence requires:

- The intent to deceive or the willingness for others to be deceived.
- Reason to believe others would rely on the silence.

(*Dunn*, 281 P.3d at 554.)

Equitable estoppel is unavailable to protect a party suffering loss solely because of his own acts or omissions (*Dunn*, 281 P.3d at 555).

A statute of limitations may be tolled during any period the defendant absconds or conceals himself from service of process (Kan. Stat. Ann. § 60-517; *Underhill*, 158 P.3d at 993-994).

Kansas courts have not determined whether equitable estoppel may toll a statute of repose (*Dunn*, 281 P.3d at 556).

FRAUDULENT CONCEALMENT RULE

The statute of limitations is tolled for claims based in fraud if the defendant conceals the facts giving rise to the claim (*Zurn Constructors, Inc. v. B.F. Goodrich Co.*, 746 F. Supp. 1051, 1056 (D. Kan. 1990)). For example, in *Webb v. Pomeroy*, the defendant who prepared plaintiffs' conveyance instruments continually represented his work as adequate and effective to achieve the desired results (655 P.2d 465, 466 (Kan. Ct. App. 1982)). The court found that the claim was not barred by the statute of limitations because the claim was filed within two years after the injury resulting from an adverse decision in an underlying lawsuit (*Webb*, 655 P.2d at 468).

Kansas case law is unclear whether tolling should be limited to fraud-based claims (*Perry H. Bacon Trust v. Transition Partners, Ltd.*, 298 F. Supp. 2d 1182, 1187 (D. Kan. 2004)). However, a Kansas court has held that the only tort not tolled by fraudulent concealment are medical malpractice claims (*Robinson v. Shah*, 936 P.2d 784, 795 (Kan. Ct. App. 1997)).

INTERRUPTION OF STATUTORY PERIOD IN CONTRACT ACTIONS

Part payment of, acknowledgment of, or promise to pay a contractual obligation extends the statute of limitations (Kan. Stat. Ann. § 60-520). In *Jarnagin v. Ditus*, the court found that by making a payment, the debtor intended to acknowledge and admit a greater debt to be due and that the trier of fact could find an implied promise to pay (424 P.2d 265, 270 (Kan. 1967)). Part payment need not be in writing (*Fisher v. Pendleton*, 336 P.2d 472, 477 (Kan. 1959)) but an acknowledgment of a liability must be in writing and signed by the bound party (*Memorial Hosp.*, 844 F. Supp. at 717).

PLAINTIFF'S LEGAL DISABILITY OR DEATH

If a person is disabled when a cause of action accrues because he is under 18 years old, incapacitated, or imprisoned for less than a

person's natural life, the action may be brought one year after the disability is removed. This tolling does not apply to actions to recover real property or a penalty or forfeiture. An action may not be filed by or on behalf of any person under the disability more than eight years after the time of the act giving rise to the cause of action. (Kan. Stat. Ann. § 60-515(a).)

If an imprisoned person has court access to bring an action, he is not deemed to be under a legal disability (Kan. Stat. Ann. § 60-515(a)).

If a person dies while being legally disabled and the cause of action has not been determined, any person entitled to claim from, by or under the deceased, may file an action within one year after the deceased's death. However, an action may **not** be filed more than eight years after the act giving rise to the cause of action. (Kan. Stat. Ann. § 60-515(b).)

SAVINGS STATUTE

A new action by a plaintiff or his representatives may start within six months of a failure of the action, provided the failure is **not** based on the merits (Kan. Stat. Ann. § 60-518).

SETOFF

A party with a time-barred claim may assert the claim as a setoff if it:

- Coexisted with the plaintiffs' claim.
- Arises out of the contract or transaction on which the plaintiffs' claim is based.

(*Lightcap v. Mobil Oil Corp.*, 562 P.2d 1, 13 (Kan. 1977); Kan. Stat. Ann. § 60-213(d).)

STATUTES OF REPOSE

Kansas has a ten-year statute of repose, which does not apply to fraud actions (*Hemphill v. Shore*, 289 P.3d 1173, 1183 (Kan. 2012); Kan. Stat. Ann. § 60-513(b)).

STAY BY INJUNCTION

The statute of limitations is tolled if there is a court injunction (Kan. Stat. Ann. § 60-519). In *Turner & Boisseau, Chartered v. Lowrance*, the court noted that if a party is prevented from exercising his legal remedy by pendency of a legal proceeding, the statute of limitations should be tolled as long as the restraint remains (852 P.2d 517, 520 (Kan. Ct. App. 1993)). An automatic stay in bankruptcy proceedings should be treated as an "injunction" under the statute (*Turner & Boisseau*, 852 P.2d at 520).

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