

Garden State CLE Presents:

**No time left for you!**  
**New Jersey Statutes of Limitations Review**



**Lesson Plan**

Robert Ramsey, Instructor

# Part I.

## Statutes of Limitation – Introduction



### a.) In general

**The general purpose of a statute of limitations is to stimulate prompt action and to penalize negligence, while promoting repose by establishing stability in human affairs. Stated differently, the purpose of statutes of limitations is to protect defendants from unexpected enforcement of stale claims by plaintiffs who fail to use reasonable diligence in prosecuting their claims. Kyle v. Green Acres at Verona, Inc., 44 N.J. 100, 115 (1965). These statutes have existed since the reign of King Henry I and King John (the nemesis of Robin Hood).**

### b.) Substantive vs. Procedural Limitations

**Statutes of limitations in civil cases are considered to be either substantive or procedural. A substantive statute of limitations can be distinguished from an ordinary or “procedural” statute of limitations. Procedural statutes of limitations govern general causes of action, such as torts and contracts. The running of a procedural statute of limitations bars only the remedy, not the right. In contrast, substantive statutes of limitations restrict statutory causes of action that did not exist at common law. A substantive statute of limitations, as a condition precedent to bringing suit, bars not only the remedy, but also the right itself.**

**Procedural statutes of limitations are not applied strictly. Flexible applications of procedural statutes of limitations may be based on equitable principles, such as the discovery rule or estoppel. In contrast, substantive statutes of limitation are usually (although not always) applied strictly.**



# Part II – Computation of time

a.) Typically, time begins to run the day following the incident where the cause of any such action shall have accrued or the offense was committed. The time period may be tolled in both civil and criminal cases for a variety of reasons.

## b.) Computation of Time in the Rules of Court

### 1:3-1. Computation of Time

In computing any period of time fixed by rule or court order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday. In computing a period of time of less than 7 days, Saturday, Sunday and legal holidays shall be excluded.

## c.) Enlargement of time in the Rules of Court

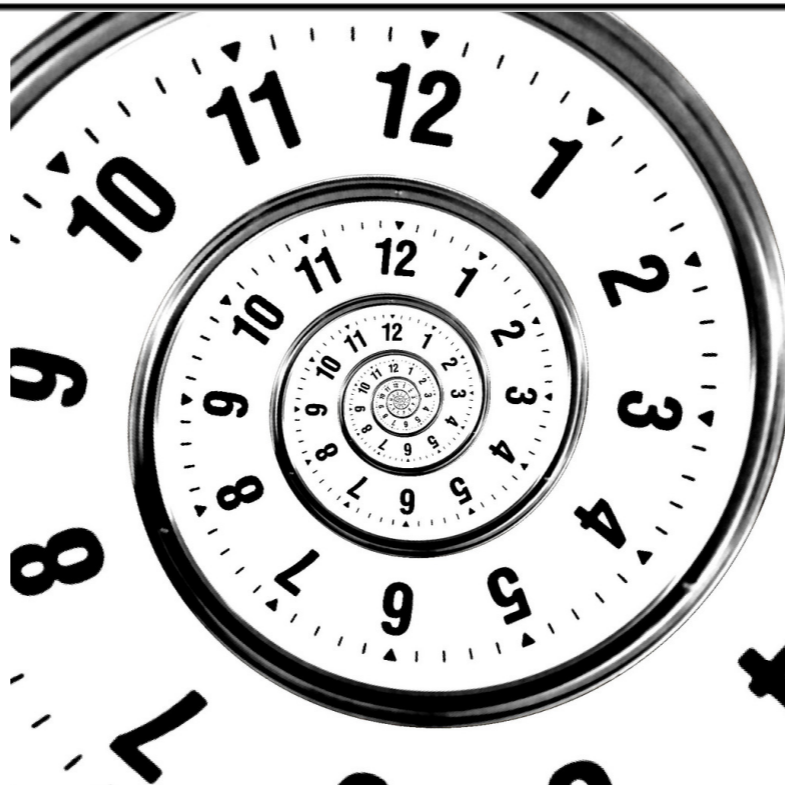
### 1:3-4. Enlargement of Time

(a) Enlargement by Order or Consent. Unless otherwise expressly provided by rule, a period of time thereby fixed for the doing of an act may be enlarged before or after its expiration by court order on notice or (unless a court has otherwise ordered) by consent of the parties in writing.



**(b) Enlargement for Appeal and Review.** Enlargement of time for appeal and review shall be governed by the following rules: appeals to the Supreme Court and Superior Court, Appellate Division, by R. 2:4-4; actions in lieu of prerogative writs in the Superior Court, Law Division, by R. 4:69-6(c); appeals to the Superior Court, Law Division from reports of condemnation commissioners, by R. 4:73-6(a); civil appeals to the Superior Court, Law Division, by R. 4:74-2(b); and review of ex parte probate actions, by R. 4:85-2.

**(c) Enlargements Prohibited.** Neither the parties nor the court may, however, enlarge the time specified by R. 1:7-4 (motion for amendment of findings); R. 3:18-2 (motion for judgment of acquittal after discharge of jury); R. 3:20-2, R. 4:49-1(b) and (c) and R. 7:10-1 (motion for new trial); R. 3:21-9 (motion in arrest of judgment); R. 3:21-10(a); R. 3:22-12 (petitions for post-conviction relief); R. 3:23-2 (appeals to the Law Division from judgments of conviction in courts of limited criminal jurisdiction); R. 3:24 (appeals to the Law Division from interlocutory orders and orders dismissing the complaint entered by courts of limited criminal jurisdiction); R. 4:40-2(b) (renewal of motion for judgment); R. 4:49-2 (motion to alter or amend a judgment); and R. 4:50-2 (motion for relief from judgment or order).

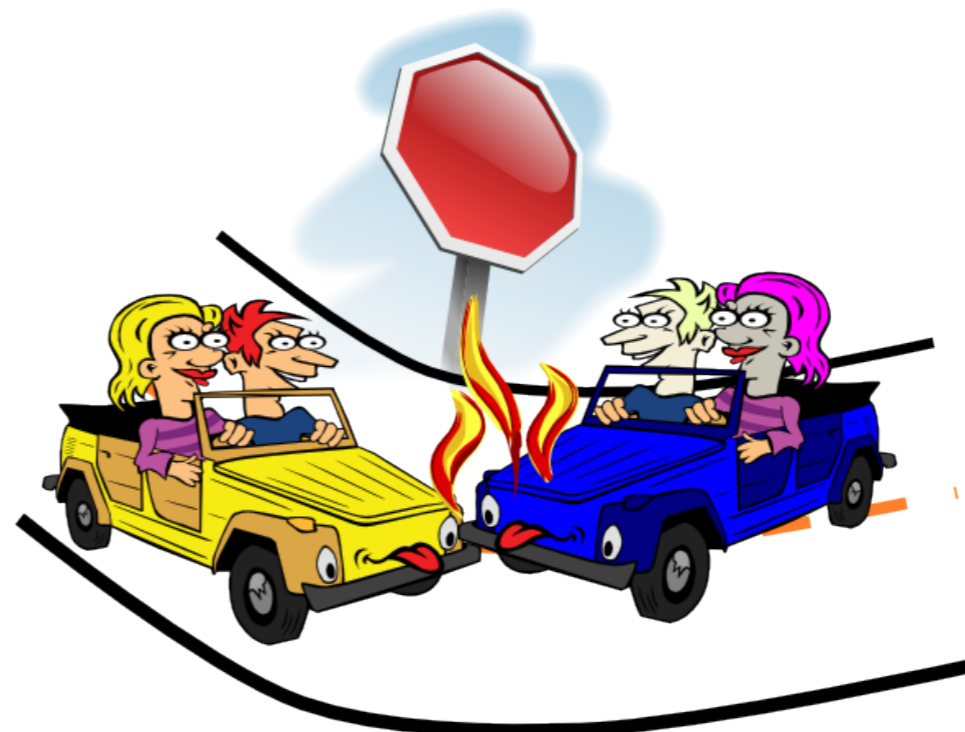
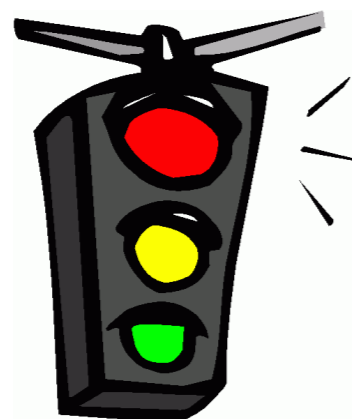


# Part III – Motor Vehicle Offenses

## **NJSA 39:5-3. Process for appearance or arrest; complaint; venue**

**a. When a person has violated a provision of this subtitle, the judge may, within 30 days after the commission of the offense, issue process directed to a constable, police officer, or the chief administrator for the appearance or arrest of the person so charged and for a violation of R.S.39:4-81, issue process within 90 days after the commission of the offense. In the case of a violation enumerated in subsection b. of this section, this period shall commence upon the filing of a complaint.**

**b. A complaint may be made to a judge for a violation of R.S.39:3-12, R.S.39:3-34, R.S.39:3-37, R.S. 39:4-129 or R.S.39:10-24 at any time within one year after the commission of the offense; for a violation of R.S.39:4-50, section 2 of P.L.1981, c. 512 (C.39:4-50.4a), section 5 of P.L.1990, c. 103 (C. 39:3-10.13), section 10 of P.L.1990 c. 103 (C.39:3-10.18), section 16 of P.L.1990, c. 103 (C.39:3-10.24), section 3 of P.L.1952, c. 157 (C.12:7-46), section 9 of P.L.1986, c. 39 (C.12:7-57), R.S.39:3-40, or section 1 of P.L.1942, c. 192 (C.39:4-128.1), at any time within 90 days after the commission of the offense.**



**a.) Analysis and review**

**Whether *N.J.S.A. 39:5-3* constitutes a statute of limitations is a question that has been expressly left open by the State Supreme Court in *State v. Celmer*, 80 N.J. 405, 404 A.2d 1 (1979).**

**Note that the statute only applies to subtitle 1 violation. They extend from NJSA 39:1-1 to NJSA 39:5G.**

**Driving without liability insurance, NJSA 39:6B-2, is a subtitle 2 violation and has its own statute of limitations of 6-months. “A complaint for violation of this act may be made to a municipal court at any time within six months after the date of the alleged offense.”**

**The case law requires that a defendant be physically served with the summons and complaint within the time limits of the statute.**

**See *State v. Fisher*, 180 NJ 462 (2004) and *State v. Buczkowski*, 395 NJ Super. 40 (App. Div. 2007).**



# Part IV – Disorderly & petty disorderly persons’ offenses

NJSA 2C:1-6(b)(2)

**A prosecution for a disorderly persons offense or petty disorderly persons offense must be commenced within one year after it is committed,**

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# Part V – Municipal Ordinance Violations

**Caldwell Terrace Apartments v. Borough of Caldwell, 224 NJ Super. 588, 596 (App. Div. 1988)**

**While municipal ordinance violations are not included in the one-year limitation imposed by *N.J.S.A. 2C:1-6b(2)* upon disorderly and petty disorderly person offenses, we can reason by analogy that the same limitation applies to municipal ordinance violations.<sup>6</sup>**

**It would be unreasonable to assume that the Legislature intended an unlimited time to prosecute municipal ordinance violations, yet intended to limit prosecution of statutory violations of equal or greater severity to one year.**

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# **Part VI – Criminal Violations –NJSA 2C:1-6.**

**a.) NJSA 2C:1-6(a)(1) and (2) -There is no Statute of Limitations for the following crimes:**

**Murder - NJSA 2C:11-3**

**Manslaughter – NJSA 2C:11-4**

**Sexual Assault NJSA 2C:14-2**

**Terrorism NJSA 2C:38-1**

**Causing or Risking Widespread Injury or Damage NJSA 2C:17-2**

**Solid Waste – NJSA 13:1E-9**

**Medical Waste NJSA 13:1E-48.20**

**Air Pollution Control Act – NJSA 26:2C-19**

**Enforcement of the Asbestos Act – NJSA 34:5A-41**

**Water Pollution Control Act - N.J.S.A. 58:10A-10**



**b.) NJSA 2C:1-6(b)(1) - A prosecution for a crime must be commenced within five years after it is committed.**

**c.) NJSA 2C:1-6(b)(3)- The following crimes have a seven year statute of limitations:**

**Bribery of a public official - NJSA 2C:27-2**

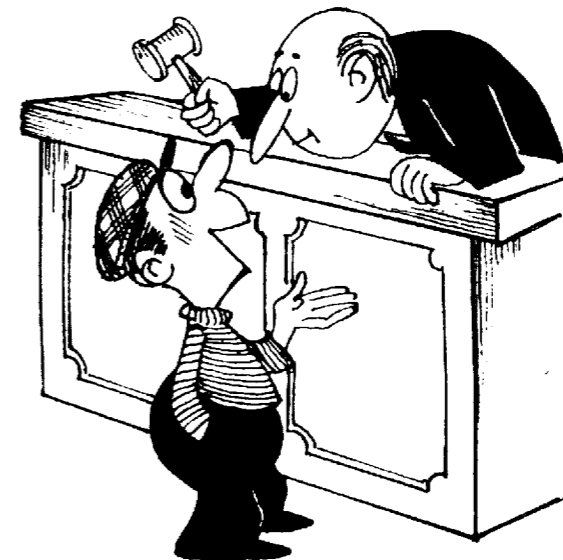
**Compounding – NJSA 2C:29-4**

**Official misconduct – NJSA 2C:30-2**

**Speculating or wagering on official action or information – NJSA 2C:30-3.**

**d.) Criminal sexual contact or Child endangerment - NJSA 2C:1-6(b)(4)**

**A prosecution for an offense set forth in [N.J.S.2C:14-3](#) or [N.J.S.2C:24-4](#), when the victim at the time of the offense is below the age of 18 years, must be commenced within five years of the victim's attaining the age of 18 or within two years of the discovery of the offense by the victim, whichever is later;**



## **Part VII – Criminal Violations: Time and tolling - NJSA 2C:1-6(c) thru (g)**

**An offense is committed either when every element occurs or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed, except that when the prosecution is supported by physical evidence that identifies the actor by means of DNA testing or fingerprint analysis, time does not start to run until the State is in possession of both the physical evidence and the DNA or fingerprint evidence necessary to establish the identification of the actor by means of comparison to the physical evidence.**

**d. A prosecution is commenced for a crime when an indictment is found and for a non-indictable offense when a warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay. Nothing contained in this section, however, shall be deemed to prohibit the downgrading of an offense at any time if the prosecution of the greater offense was commenced within the statute of limitations applicable to the greater offense.**

**e. The period of limitation does not run during any time when a prosecution against the accused for the same conduct is pending in this State.**

**f. The limitations in this section shall not apply to any person fleeing from justice.**

**g. Except as otherwise provided in this code, no civil action shall be brought pursuant to this code more than five years after such action accrues.**

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# Part VIII – Civil Actions

## a.) Actions on a contract:

6 years

NJSA 2A:14-1

**Every action at law for trespass to real property, for any tortious injury to real or personal property, for taking, detaining, or converting personal property, for replevin of goods or chattels, for any tortious injury to the rights of another not stated in sections 2A:14-2 and 2A:14-3 of this Title, or for recovery upon a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within 6 years next after the cause of any such action shall have accrued.**

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**Applies to UM/UIM causes of action. Time begins to run on the date of the accident, not the date of the breach of contract. *Green v. Selective Insurance Co.*, 144 NJ 344 (1996).**



## **b.) Actions on personal injury:**

**2 years**

**NJSA 2A:14-2**

**a. Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be commenced within two years next after the cause of any such action shall have accrued; except that an action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth shall be commenced prior to the minor's 13th birthday.**

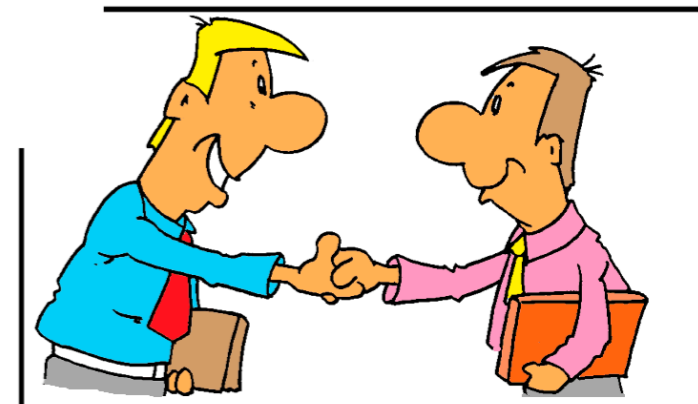
**b. In the event that an action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth is not commenced by the minor's parent or guardian prior to the minor's 12th birthday, the minor or a person 18 years of age or older designated by the minor to act on the minor's behalf may commence such an action. For this purpose, the minor or designated person may petition the court for the appointment of a guardian *ad litem* to act on the minor's behalf.**

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**This statute generally applies to injuries in products liability actions, subject to the “discovery rule.” *Cornett v. Johnson and Johnson*, 414 NJ Super. 365, 377 (App. Div. 2010). The discovery rule is applied to product liability actions, including actions alleging defects in medical devices, and actions alleging inadequate warnings of risks associated with a drug, where the relationship between a plaintiff's injury and a defendant's fault is not self-evident. *Cornett v. Johnson and Johnson*, 211 NJ 362, 376-77 (2012).**

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**This statute also applies to civil rights violations under 42 USC 1983. *Freeman v. State of New Jersey*, 347 NJ Super. 11 (App. Div. 2002)**

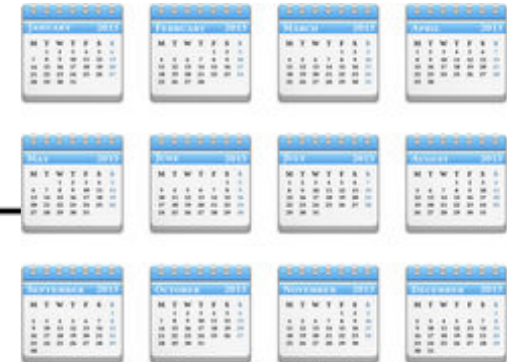


### **c.) Wrongful death**

**2 years NJSA 2A:14-31**

**Every action brought under this chapter shall be commenced within 2 years after the death of the decedent, and not thereafter, provided, however, that if the death resulted from murder, aggravated manslaughter or manslaughter for which the defendant has been convicted, found not guilty by reason of insanity or adjudicated delinquent, the action may be brought at any time.**

**This time period can be equitable tolled for minors as part of NJSA 2A:14-21.  
See LaFage v. Jani, 166 NJ 412 (2001).**



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### **d.) Survivor's action**

**2 years NJSA 2A:15-3**

**Every action brought under this chapter shall be commenced within two years after the death of the decedent, and not thereafter, provided, however, that if the death resulted from murder, aggravated manslaughter or manslaughter for which the defendant has been convicted, found not guilty by reason of insanity or adjudicated delinquent, the action may be brought at any time.**

**Note: This limitation extends to surviving claims for slander, libel and malicious prosecution. Fricke v. Geladaris, 221 NJ Super. 49 (App. Div. 1987).**

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### **e.) Libel and slander**

**1 year NJSA 2A:14-3**

**Every action at law for libel or slander shall be commenced within 1 year next after the publication of the alleged libel or slander.**



## **f.) Tort Claims – Initial Notice**

**90 days**

**2 years old suit**

**NJSA 59:8-8**



**A claim relating to a cause of action for death or for injury or damage to person or to property shall be presented as provided in this chapter not later than the 90th day after accrual of the cause of action. After the expiration of six months from the date notice of claim is received, the claimant may file suit in an appropriate court of law. The claimant shall be forever barred from recovering against a public entity or public employee if:**

- a. The claimant failed to file the claim with the public entity within 90 days of accrual of the claim except as otherwise provided in N.J.S.59:8-9; or**
- b. Two years have elapsed since the accrual of the claim; or**
- c. The claimant or the claimant's authorized representative entered into a settlement agreement with respect to the claim.**

**Nothing in this section shall prohibit a minor or a person who is mentally incapacitated from commencing an action under this act within the time limitations contained herein, after reaching majority or returning to mental capacity.**

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## **g.) Late tort claims – NJSA 59:8-9**

### **59:8-9. Notice of late claim**

**A claimant who fails to file notice of his claim within 90 days as provided in section 59:8-8 of this act, may, in the discretion of a judge of the Superior Court, be permitted to file such notice at any time within one year after the accrual of his claim provided that the public entity or the public employee has not been substantially prejudiced thereby. Application to the court for permission to file a late notice of claim shall be made upon motion supported by affidavits based upon personal knowledge of the affiant showing sufficient reasons constituting extraordinary circumstances for his failure to file notice of claim within the period of time prescribed by section 59:8-8 of this act or to file a motion seeking leave to file a late notice of claim within a reasonable time thereafter; provided that in no event may any suit against a public entity or a public employee arising under this act be filed later than two years from the time of the accrual of the claim.**



## **h.) 2A:14-23.1. Cause of action belonging to decedent**

**No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than 6 months after death. A cause of action which, but for this section, would have been barred less than 6 months after death, is barred 6 months after death, unless tolled.**

**[This] statute, enacted in 1977, specifically extends for six months after death the applicable SOL for any “cause of action belonging to a decedent which had not been barred as of the date of his death,” and for any “cause of action which ... would have been barred less than [six] months after death.” The legislation was intended to adopt a provision of the Uniform Probate Code and serves the salutary purpose of providing executors and administrators with a limited period of time after death to evaluate potential claims available to the estate. Warren v. Muenzen, 448 NJ Super. 52, 67-68 (App. Div. 2016).**

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## **i.) NJSA 39:6A-13.1 – PIP Benefits**

**Every action for the payment of benefits payable under a standard automobile insurance policy pursuant to sections 4 and 10 of P.L.1972, c. 70 (C.39:6A-4 and 39:6A-10), medical expense benefits payable under a basic automobile insurance policy pursuant to section 4 of P.L.1998, c. 21 (C. 39:6A-3.1) or benefits payable under a special automobile insurance policy pursuant to section 45 of P.L.2003, c.89 (C.39:6A-3.3), except an action by a decedent's estate, shall be commenced not later than two years after the injured person or survivor suffers a loss or incurs an expense and either knows or in the exercise of reasonable diligence should know that the loss or expense was caused by the accident, or not later than four years after the accident whichever is earlier, provided, however, that if benefits have been paid before then an action for further benefits may be commenced not later than two years after the last payment of benefits.**

**See also Garcia v. Snedeker, 199 NJ Super. 254 (App. Div. 1985) for adopted two-year UCJF statute of limitations same as NJSA 39:6A-13.1.**

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## **j.) NJSA 52:4B-18 – Victims of Crime Compensation Agency Actions**

**No order for the payment of compensation shall be made under section 10 of P.L.1971, c. 317 ([C.52:4B-10](#)) unless the application has been made within three years after the date of the personal injury or death or after that date upon determination by the office that good cause exists for the delayed filing, and the personal injury or death was the result of an offense listed in section 11 of P.L.1971, c. 317 ([C.52:4B-11](#)) which had been reported to the police or other appropriate law enforcement agency within nine months after its occurrence or reasonable discovery. If the victim is under 18 years of age, the three-year limit on filing shall commence on the day the victim turns 18 years old. For the purposes of this section, “good cause” shall include, but not be limited to, instances where the victim or the victim's dependents were not appropriately informed of the benefits offered by the office as required by law. The office will make its determination regarding the application within six months of acknowledgment by the office of receipt of the completed application and any and all necessary supplemental information.**

**Leading case is *White v. VCCB*, 76 NJ 368, 379-84 (1978)**

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**k.) Amusement park injuries – NJSA 5:3-57(a) and (c).**

**a. As a precondition to bringing any suit in connection with an injury against an amusement park operator, a rider shall report in writing to the amusement park operator all the details of any accident within 90 days from the time of the incident giving rise to the suit.**

**c. An accident report shall include at least the following: name and address of the accident victim, brief description of incident location, alleged cause of accident, name and address of the ride operator, others involved and witnesses, if any. The precondition in subsection a. of this section is not applicable unless the operator conspicuously posts notice of the reporting requirement in English and one other language deemed appropriate by the amusement park operator and in at least five different locations on the premises, including each entrance and exit, each place designated for receiving reports of accidents and injuries during business hours and each place designated as a first aid station. The Department of Labor shall provide the rider or his representative with a copy of the accident report as required by section 17 of P.L.1975, c. 105 (C. 5:3-47) upon request.**



# Part IX – Tolling of Civil SOL

## a.) By statute - NJSA 2A:14-21

**If a person entitled to commence an action or proceeding specified in N.J.S.2A:14-1 to 2A:14-8 or N.J.S.2A:14-16 to 2A:14-20 or to a right or title of entry under N.J.S.2A:14-6 is under the age of 18 years or a person who has a mental disability that prevents the person from understanding his legal rights or commencing a legal action at the time the cause of action or right or title accrues, the person may commence the action or make the entry, within the time as limited by those statutes, after reaching majority or having the mental capacity to pursue the person's lawful rights. Notwithstanding the provisions of this section to the contrary, an action by or on behalf of a minor that has accrued for medical malpractice for injuries sustained at birth shall be commenced prior to the minor's 13th birthday, as provided in N.J.S.2A:14-2.**



## **b.) The Discovery Rule (The *Lopez* Hearing)**

**This rule was first announced in *Lopez v. Swyer*, 62 NJ 267, 273-74 (1973). The Discovery Rule can equitably toll a wide variety of SOL in civil cases ranging from wrongful death to recovery of personal property, such as a painting (*O’Keefe v. Snyder*, 83 NJ 478 (1980)).**

**It is an equitable rule designed to mitigate the harshness that sometimes results from a rigid application of a statute of limitations. Under the discovery rule, a cause of action does not accrue “until the injured party discovers, or by an exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim.” In applying the discovery rule, the court considers the inequity of a blameless person losing a claim because he was unaware of an injury or did “not know that it [was] attributable to the fault or neglect of another” until after the statute of limitations had run. The court then [hold a so-called *Lopez* hearing and] must consider whether it is “unjust, however, to compel a person to defend a law suit long after the alleged injury has occurred, when memories have faded, witnesses have died and evidence has been lost.”**

**After weighing these factors, the trial court must decide whether the claimant is equitably entitled to application of the discovery rule. The burden is on the plaintiff to satisfy the court that the discovery rule should be applied. In making this decision, the court shall consider “[a]ll relevant facts and circumstances.”**



**The determinative factors may include but need not be limited to: the nature of the alleged injury, the availability of witnesses and written evidence, the length of time that has elapsed since the alleged wrongdoing, whether the delay has been to any extent deliberate or intentional, [and] whether the delay may be said to have peculiarly or unusually prejudiced the defendant.**

**When determining whether to apply the discovery rule, the court looks at the “injured party's knowledge concerning the origin and existence of his injuries as related to the conduct of another person. Such knowledge involves two key elements, injury and fault.” The question thus is “whether the facts presented would alert a reasonable person, exercising ordinary diligence, that he or she was injured due to the fault of another.”**

**When determining whether the injured party had knowledge of fault, the law does not require that the person have a provable claim or even that the person be aware of facts to suggest that fault is “probable,” rather all that is required is that the person be aware of facts which suggest the “*possibility*” of wrongdoing. [K]nowledge of fault” for purposes of the discovery rule has a circumscribed meaning: it requires only the awareness of facts that would alert a reasonable person exercising ordinary diligence that a third party's conduct *may* have caused or contributed to the cause of the injury and that conduct itself might *possibly* have been unreasonable or lacking in due care.”**

**Savage v. Old Bridge-Sayreville Med. Group, 134 N.J. 241, 248 (1993).**

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## c.) The Substantial compliance doctrine

**Negron v. Llarena, 156 NJ 296 (1998)**

**The doctrine of substantial compliance allows for the flexible application of a statute in appropriate circumstances. In the circumstances of this case where an action, though later dismissed, was filed within the time prescribed by the statute of limitations, we can turn initially to that doctrine to determine whether the condition implicit in the statute of limitations may be deemed to have been satisfied and whether plaintiff's complaint was timely filed. Courts invoke the doctrine of substantial compliance to 'avoid technical defeats of valid claims.'**

**The five elements of a substantial compliance SOL tolling are:**

- (1) the lack of prejudice to the defending party;**
- (2) a series of steps taken to comply with the statute involved;**
- (3) a general compliance with the purpose of the statute;**
- (4) a reasonable notice of petitioner's claim[;] and**
- (5) a reasonable explanation why there was not a strict compliance with the statute.**



## **d.) Equitable tolling**

**The modern view is that it applies to both substantive and procedural statutes of limitation.**

**We adopt the view that in the case of a statutorily created right, a “substantive” limitation period may appropriately be tolled in a particular set of circumstances if the legislative purpose underlying the statutory scheme will thereby be effectuated. *White v. VCCB*, 76 NJ 368, 379 (1978).**

**Equitable tolling has generally been applied in three circumstances:**

- (1) [where] ‘the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass’ ...**
- (2) where a plaintiff has ‘in some extraordinary way’ been prevented from asserting his rights [and] ...**
- (3) where a plaintiff has timely asserted his rights mistakenly by either defective pleading or in the wrong forum.**

**Absent a showing of intentional inducement or trickery by a defendant, the doctrine ... should be applied sparingly and only in the rare situation where it is demanded by sound legal principles and in the interest of justice. As required by the doctrine of substantial compliance, equitable tolling requires plaintiffs to diligently pursue their claims” because although it affords relief from inflexible, harsh or unfair application of a statute of limitations, [it] does not excuse claimants from exercising the reasonable insight and diligence required to pursue their claims.**

***Binder v. Price Waterhouse*, 393 NJ Super. 304, 312 (App. Div. 2007)**



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