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# Limitation in Commercial Invoice Claims

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**Consulting Concepts**  
**International Inc v**  
**Consumer Protection**  
**Association (Saudi**  
**Arabia) [2023] 4 W.L.R.**  
**15**

Three key issues:

1. The basic rules of limitation for contracts for services.
2. How *CCI v CPA* dealt with these principles.
3. Key takeaways for drafting contracts of the future.

## Limitation Act 1980

- “[A]ny provision which specifies a time-limit within which legal proceedings of a particular kind must be brought”

**(McGee. *Limitation Periods*, 8<sup>th</sup> Ed. 1-001)**

- Entirely a matter of statute since the Statute of Limitations 1623.  
**(Ibid. 1.004)**

- **5 Time limit for actions founded on simple contract.**

An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

**(Limitation Act 1980, s.5)**

## ***Coburn v Colledge* [1897] 1 QB 702**

- Facts: P, a solicitor, completed work on 30.05.1889. D, his client, left the country on 07.06.1889 and P posted a letter with his signed bill of costs on 12.06.1889. Claim commenced on 12.06.1896, and held to be statute barred.
- Ratio: time begins to run as soon as the work is completed, unless there is some special term of the agreement.
- Lord Esher M.R. at 705:

*[...]The question is when in such a case as this the cause of action arises. The action is brought by the plaintiff in respect of work done by him as a solicitor. In the case of a person who is not a solicitor, and who does work for another person at his request on the terms that he is to be paid for it, unless there is some special term of the agreement to the contrary, his right to payment arises as soon as the work is done; and thereupon he can at once bring his action.*

# **Coburn v Colledge [1897] 1 QB 702**

- Lord Esher M.R. at 706 (emphasis added):

*Similarly, I think s. 37 of the Solicitors Act, 1843, deals, not with the right of the solicitor, but with the procedure to enforce that right. It does not provide that no solicitor shall have any cause of action in respect of his costs or any right to be paid till the expiration of a month from his delivering a signed bill of costs, but merely that he shall not commence or maintain any action for the recovery of fees, charges, or disbursements until then. It assumes that he has a right to be paid the fees, charges, and disbursements, but provides that he shall not bring an action to enforce that right until certain preliminary requirements have been satisfied. If the solicitor has any other mode of enforcing his right than by action, the section does not seem to interfere with it. For instance, if he has money of the client in his hands not entrusted to him for any specific purpose, there is nothing in the section to prevent his retaining the amount due to him out of that money. **If that be the true construction of the section, it does not touch the cause of action, but only the remedy for enforcing it. The definition of "cause of action" which I gave in Read v. Brown has been cited. I there said that it is "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court."***

## ***Coburn v Colledge* [1897] 1 QB 702**

- Lord Justice Lopes at p.709:

*the solicitor may abstain from delivering his bill for twenty years, and then at the end of that time he may deliver it and sue after the expiration of a month from its delivery. It seems to me that this would be a very anomalous and inconvenient result.*

- Lord Justice Chitty at pp.709-710:

*it in no way affects the cause of action, which is money payable for work done, but only postpones the right of action upon it for at least one month from delivery of the bill.*

*[...]*

*that suggestion is contrary to the whole scope of the Statutes of Limitation, which is, that, instead of it being left in case of delay to the court to say what is unreasonable delay, as occurred sometimes in cases in the Court of Chancery, a fixed period should be laid down by enactment.*

# ***Henry Boot Construction Ltd v Alstom Combined Cycles Ltd [2005] EWCA Civ 814***

- Facts: C, a contractor, was employed by D, for the main civil works for the construction of a power station. The standard form contract provided that within 28 days of the date of delivery to the engineer of C's monthly statement the engineer would give a certificate and D would pay to C the sum certified. In an arbitration it was held that C's claim was statute barred because time began to run from the date the works had been completed and not the date of certification. On appeal the arbitrator's decision was overturned.
- Ratio: as a matter of construction the standard term of certification was a condition precedent to C's entitlement to payment and therefore the claim was not statute-barred.

# ***Henry Boot Construction Ltd v Alstom Combined Cycles Ltd [2005] EWCA Civ 814***

19. [Counsel for the Defendant] submits that Boot's cause of action accrues on the doing of the work, not necessarily brick by brick, but periodically, which, for the purposes of the Limitation Act 1980, he says means day by day and in any event at the end of each period for which Boot is first entitled to submit a statement of the value claimed. The engineer's valuations and certificates under clause 60(2)(4) are irrelevant to the accrual of the cause of action. They are no more than evidence of the engineer's opinion of what is due to Boot. The entitlement to payment exists independently of the exercise of that machinery by the engineer, because in this contract the engineer does not create rights for the contractor; rather he recognises and assesses or determines what Boot's rights are at any given time.

20. An early authority on which [Counsel for the Defendant] relies is *Coburn v Colledge* [1897] 1 QB 702 . This establishes the proposition that, where A does work for B at B's request on terms that A is entitled to be paid for it, his right to be paid for it (i e his cause of action) arises as soon as the work is done "unless there is some special term of the agreement to the contrary": per Lord Esher MR, at p 705g. In my view, this decision is not sufficient to vindicate [Counsel for the Defendant's] argument for two reasons. First, it begs the question of what is "the work" for this purpose: is it the whole of the work which is the subject of the contract, or certain separately identified parts of the work? Secondly, the question arises whether, as [Counsel for the Claimant] submits to be the case, clause 60 is a "special term of the agreement to the contrary".



# ***Legal Services Commission v Henthorn*** **[2011] EWCA Civ 1415**

- The Legal Services Commission brought a claim against a voluntarily disbarred barrister for alleged overpayments of legal aid. The court held that claims were not statute barred because time started to run once an assessment was completed under reg.100(8) of the Civil Legal Aid (General) Regulations 1989, rather than from the date that the work under the certificate was completed.
- Lord Neuberger M.R., as he then was, stated at [31]:

*Save where it is the essence of the arrangement between the parties that a sum is not payable until demanded (e.g. a loan expressly or impliedly repayable on demand) it appears to me that clear words would normally be required before a contract should be held to give a potential or actual creditor complete control over when time starts running against him, as it is such an unlikely arrangement for an actual or potential debtor to have agreed.*

# ***ICE Architects Ltd v Empowering People Inspiring Communities* [2018] EWHC 281 (QB)**

- C was a firm of architects that agreed to provide design services for a scheme being developed by D. D had written to C stating that C would invoice D on a monthly basis and D would endeavour to make payment within 30 days of receipt of the invoice. Lambert J rejected C's argument that this was an agreement that C's entitlement to payment did not arise until 30 days after the invoice and held its claims were statute barred.
- Other cases to consider at one's leisure:
  - *Hirst v Dunbar* [2022] EWHC 41 (TCC); [2022] BLR Plus 14 (Eyre J.)
  - *Horlick & Ors v Cavaco & Ors* [2022] EWHC 2935 (KB) (Freedman J.)

# ***Consulting Concepts International Inc v Consumer Protection Association (Saudi Arabia) [2023] 4 W.L.R. 15***

- *“All invoices submitted by CCI will be paid within 90 days if funds of Stakeholders are available, by [sic] submission of said Invoice by Consumer Protection Association to a Bank account designated by CCI.”*
- Invoices for services provided prior to 17 December 2013 (\$15,129,800.00).
- An undertaking received on or around 2 October 2013 to transfer \$43,055,500.00 (161,500,000 Saudi Riyals) by 31 December 2013.

# ***Consulting Concepts International Inc v Consumer Protection Association (Saudi Arabia) [2023] 4 W.L.R. 15***

- Lady Justice Andrews in *CCI v CPA* at [27]:

*Lord Esher confirmed that a cause of action is complete when the claimant can assert all the facts which it would be necessary for him to prove in order to support his right to judgment. When the work was finished, the solicitor could have brought his action claiming money payable for work done at the request of the defendant, and unless the defendant set up something to defeat the claim, the action would have been maintainable. The defendant might plead that no bill of costs had been delivered, but that would only be by way of answer to a case which constituted a good cause of action. The Master of the Rolls was there drawing a distinction between circumstances in which a defendant can strike out the claim as disclosing no cause of action, and circumstances in which he can raise a substantive defence to the claim. The fact that the debtor has not yet received an invoice seeking payment or other notification that the work has been done falls into the latter category.*

# ***Consulting Concepts International Inc v Consumer Protection Association (Saudi Arabia) [2023] 4 W.L.R. 15***

- Lady Justice Andrews in *CCI v CPA* at [35]:

*The Judge rightly identified in para 58(iv) that the critical distinction is between terms which are conditions precedent to the right to payment arising, and terms which impose conditions for the bringing of proceedings, which are concerned with limiting the creditor's right to bring an action to enforce an entitlement to payment. The latter are procedural obstacles which do not prevent the running of time unless they are covered by one of the exceptions in the Limitation Act 1980. The fact that, as is commonplace, the debtor is afforded a certain amount of time to pay does not postpone the accrual of the cause of action, though it may afford him a defence to a claim which is brought before the expiry of the period of credit.*

## Practical considerations following *CCI*

- The accrual of a period of limitation in a contract for services has nothing to do *per se* with the time in which the payment is due.
- Even if there is a bar in place procedurally (such as under the Solicitors Acts) or contractually (such as a 30-day or 90-day invoicing clause) that does not mean time will run from the first point at which the bar is lifted.
- The way to try and ensure that time is paused is to have either a complex set of certification provisions, or conditions precedent, that prevent the cause of action accruing, such as in *Henry Boot*, or have very clear wording that indicates the parties have agreed to affect the accrual of the cause of action/ the period of limitation.
- However, it will remain to be seen if it is enough to agree that a 90-day invoicing provision expressly stated as displacing the start date under s.5 of the Limitation Act 1980 will be clear enough on construction. In theory it should be but there is not yet any reported case on all fours with this hypothetical situation.

## Conclusion

- This morning we have examined:
  - The classic principles underpinning the law of limitation in contracts for services (i.e. s.5, *Coburn* and *Henry Boot*).
  - How the Court of Appeal in *CCI v CPA* has applied those principles.
  - Practical takeaways to assist with cases going forward.

# Radcliffe Chambers

A photograph of a London skyline. In the foreground, there's a large, ornate Gothic-style building with a prominent spire and intricate architectural details. In the background, the Shard is visible against a clear blue sky. The image is partially obscured by a dark purple diagonal shape on the left side.

**Thank you!**

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