

LIMITATION: CONCEALMENT, FRAUD AND MISTAKE

STATUTES

1. Limitation Act 1980, Section 32:

“32 Postponement of limitation period in case of fraud, concealment or mistake.

(1) ... where in the case of any action for which a period of limitation is prescribed by this Act, either—

- (a) the action is based upon the fraud of the defendant; or
- (b) any fact relevant to the plaintiff’s right of action has been deliberately concealed from him by the defendant; or
- (c) the action is for relief from the consequences of a mistake;

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it. References in this subsection to the defendant include references to the defendant’s agent and to any person through whom the defendant claims and his agent.

(2) For the purposes of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty...”;

2. Limitation Act 1980, Section 36:

“36 Equitable jurisdiction and remedies.

(1) The following time limits under this Act, that is to say—

- (a) the time limit under section 2 for actions founded on tort;
- (b) the time limit under section 5 for actions founded on simple contract;

... ..

shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any such time limit may be applied by the court by analogy in like manner as the corresponding time limit under any enactment repealed by the Limitation Act 1939 was applied before 1st July 1940...”;

3. Cayman Limitation Law, Sections 37 & 42;

4. Bermuda Limitation Act, Section 33 & 37;

5. Bahamas Limitation Act, Section 41 & 5(4);

6. BVI Limitation Ordinance, Sections 25 and 4(7).

CASES

Deliberate Concealment

Effect of Deliberate Concealment

1. *Sheldon v RHM Outhwaite (Underwriting Agencies) Ltd* [1995] 2 All ER 558;
2. *Al-Hasani v Nettler* [2019] EWHC 640 (Ch);
3. *RG Securities (No.2) Ltd v Allianz Global Corporate and Speciality* [2020] EWHC 1646 (TCC);

Meaning of Deliberate Concealment

4. *Canada Square Operations Ltd v Potter* [2024] AC 679;
5. *Primeo v Bank of Bermuda* [2024] AC 727;
6. *IBM United Kingdom Ltd v LzLabs GmbH* [2025] EWHC 532 (TCC);

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7. *Hellard v Mahuf* BVIHC (COM) 2017/0134 (23 August 2021);
8. *Hamilton v Kaljo* (1989) 17 NSWLR 381;
9. *Seymour v Seymour* (1996) 40 NSWLR 358;
10. *Twigg v Twigg* [2022] NSWCA 68;

Reasonable Diligence

11. *Upham v HSBC Plc* [2024] EWHC 849;

Leading cases

12. *Test Claimants in the FII Group Litigation v Revenue and Customs Commissioners* [2020] AC 1 (mistake of law);
13. *Gemalto Holding BV v Infineon Technologies AG* [2023] Ch 169 (cases of fraud and concealment);

Statement of claim vs worthwhile claim

14. *Transworld v Hunt* [2025] EWHC 2480 (Ch);
15. *Arif v Sanger* [2025] EWHC 1540 (KB);
16. *Superfast Trading v Bank of Ireland* [2025] EWHC 871 (Comm) at [86]-[99];

Discovery of different claims at different times

17. *Grant v News Group Newspapers* [2023] EWHC 1273 (Ch);

Objective test? Relevance of claimant's characteristics

18. *OT Computers Ltd v Infineon Technologies AG and others* [2021] QB 1183;
19. *BAT Industries v IRC (FII Test Claimants II)* [2025] EWCA Civ 1271;
20. *Superfast Trading v Bank of Ireland* [2025] EWHC 871 (Comm) at [141]-[148];
21. *In Media Trust v BGB Weston* [2024] EWHC 3277 (KB);
22. *Bilta v Tradition Financial Services* [2025] UKSC 1015;

Whose diligence? Agents?

23. *Riyait v Dawett* [2018] EWCA Civ 593;
24. *IBM United Kingdom Ltd v LzLabs GmbH* [2025] EWHC 532 (TCC);

The relevance of a trigger

25. *OT Computers Ltd v Infineon Technologies AG and others* [2021] QB 1183;
26. *Superfast Trading v Bank of Ireland* [2025] EWHC 871 (Comm) [64]-[85];

Based on the fraud of the defendant

27. *Sixteenth Ocean GmbH v Société Générale* [2018] EWHC 1731 (Comm);
28. *Cunningham v Ellis* [2018] EWHC 3188 (Comm);
29. *Hotel Portfolio II UK Ltd v Ruhan* [2022] EWHC 383 (Comm), at [312];
30. *Morjaria v Mirza* [2025] EWHC 1961 (Ch);

Mistake: application of common law by analogy to equitable mistake

31. *Pitt v Holt* [2013] 2AC 108;
32. *Van der Merwe v Goldman* [2016] 4 WLR 71;
33. *P&O Nedlloyd v Arab Metals* [2007] 1 WLR 2288;
34. *IGE v HMRC* [2021] 3 WLR 313;
35. *Wong v Grand View Private Trust Company* (Bermuda CA, 2025).