

Laches and limitation

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Abstract

The application of statutory limitation periods to breach of trust and other equitable claims is often unclear, and the operation of the doctrine of laches is likewise far from transparent. This article seeks to clarify the key features of both, focusing on those aspects most likely to give rise to difficulties: equitable property rights, the role of unconscionability, and the interaction of statutory limitation and laches, both in cases where laches may provide a good defence *before* the statutory time limit has expired, and where the statutory exclusion of *any* limitation period might be understood as precluding a laches defence.

The Chancery Division of the High Court, now to be found sitting in the strikingly modern surroundings of the Rolls Building, feels like it has come a long way from the Dickensian fogs of *Jarndyce v Jarndyce*.¹ But issues of delay still bedevil trusts litigation, with proceedings sometimes first begun many years after the events with which they are concerned. It is sometimes supposed that courts concerned primarily with the machinations of equity will be less concerned with delay than pernickety common lawyers, and even that there are no time limits at all in equity and trusts cases. But these beliefs are misconceived: limitation periods *do* apply, and equity, whilst doubtless more flexible in its approach through the doctrine of laches, can flex to severity as well as to leniency. The interaction between laches and statutory limitation is

still less understood. The purpose of this article is to clarify the crucial elements of both limitation and laches, and to consider some of the key issues arising out of them, and out of the interaction between them.

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Statutory limitation

Equity's relationship with statutory limitation periods has always been both confused and confusing. Whilst the Limitation Act 1980 does make some provision for trusts claims,² it does so only to a limited extent: some types of claim have a prescribed limitation period, others are specifically designated as having *no* limitation period. But since limitation is a creature purely of statute, the latter conclusion applies not only to those claims so identified, but to *any* claim not within the first category. The starting point must be the principal limitation period for trusts claims prescribed by Section 21(3) of the Act: 6 years from accrual of the cause of action, the same period as is prescribed for actions in contract.³ This applies to any 'action by a beneficiary to recover trust property or in respect of any breach of trust'.⁴ But it does not apply to two important types of claim, and it is perhaps from the breadth of these that the 'no limitation

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1. The long-running dispute at the heart of Charles Dickens's *Bleak House*.

2. For limitation purposes, claims against a personal representative in respect of a deceased's estate are treated exactly as claims against trustees: Limitation Act 1980, s 38(1), applying the definition of 'trust' and 'trustee' found in the Trustee Act 1925 at s 68(17). See *Re Loftus* [2006] EWCA Civ 1124, [2007] 1 WLR 591 [31].

3. Limitation Act 1980, s 5.

4. *Ibid* s 21(3).

period in trusts' myth is derived. First, there will be no limitation period where the claim is brought by a trust beneficiary 'in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy'.⁵ Whilst this is an important exception to the general six-year period, it is narrower than it appears. In particular, it applies only to trustees of express trusts, and to others, such as trustees *de son tort* and agents agreeing to receive trust property,⁶ who voluntarily assume fiduciary obligations. Despite the apparent breadth of the words 'in respect of' it does not apply, for example, to a third party who assists in a fraudulent breach of trust.⁷ Secondly, there will be no applicable limitation period where the beneficiary's claim is brought

to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.⁸

Claims which fall within none of these categories are also free of statutory limitation, though by omission rather than express exclusion.⁹ For example, it has long been the law that there is no limitation period at all in respect of a claim to an account based upon a fiduciary relationship,¹⁰ where no breach of trust is alleged.¹¹

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Equity goes further, too, and does not restrict itself simply to applying the Limitation Act as enacted. Section 36 disapplies the key provisions of the Act in so far as they would otherwise apply to claims for 'equitable relief', such as specific performance or an injunction, except in so far as they would have been applied by analogy prior to the Limitation Act 1939 coming into force. Whether or not this is simply 'an illustration of the maxim that equity follows the law'¹² it is clear that this long-standing doctrine¹³ remains of importance. For example, there is no provision in section 21 of the Act for a trust claim which is not 'an action by a beneficiary'. Yet a claim typically seen as belonging to a beneficiary might equally be brought by a trustee, against another trustee or a third party.¹⁴ This is particularly likely if the beneficiaries are minors or unborn, or where the trust is for a large discretionary class.¹⁵ It would be absurd if, say, a breach of trust claim against a former trustee would be subject to a six-year limitation period if brought by a beneficiary, but to no limitation period at all if brought by a current trustee. The authors of *Underhill and Hayton* must surely be correct to conclude that the Court would simply apply the six year period by analogy.¹⁶

Equitable analogy apart, these limitation periods all share some important common features. They are

5. *Ibid* s 21(1)(a).

6. See DJ Hayton, P Matthews and C Mitchell, *Underhill and Hayton: Law Relating to Trusts and Trustees* (18th edn, LexisNexis 2010) [94.9].

7. *Cattley v Pollard* [2006] EWHC 3130 (Ch), [2007] Ch 353 [85]-[90]. For an alternative view, see C Mitchell, 'Assistance' in P Birks and A Pretto (eds), *Breach of Trust* (Hart Publishing 2002) 209-211.

8. Limitation Act 1980, s 21(1)(b).

9. This distinction is important to the reasoning as to whether laches applies where statutory limitation does not: see text to n 49 and following.

10. *Attorney-General v Cocke* [1988] Ch 414 (Ch) 421.

11. Such that there is, in this respect at least, some difference between an action for an account in common form and one taken on the footing of wilful default. No limitation period applies to the former. The latter, since it can be brought only on proof of wrongdoing by the trustee or other fiduciary (*Re Stevens* [1898] 1 Ch 162 (CA) 170) is likely within the six-year period prescribed by s 21(3), unless the wrongdoing is fraud. It might be mere negligence: *Armitage v Nurse* [1998] Ch 241 (CA) 252; *Iliffe v Trafford* [2001] All ER (D) 306 (Dec) (Ch) [9]. There is no separate limitation period for an action for account: it simply follows, under s 23 of the Act, from whatever claim founds the duty to account.

12. RP Meagher, JD Heydon and MJ Leeming, *Equity: Doctrines and Remedies* (4th edn, Butterworths LexisNexis 2002) [34-075].

13. *Hovenden v Lord Annesley* (1806) 2 Sch & Lef 607, 630-32; *Knox v Gye* (1872) LR 5 HL 656, 674-75.

14. Hayton, Matthews and Mitchell (n 6) [94.4].

15. It was formerly also very common in relation to 'Hastings-Bass' claims, but should be rarer in future, in view of Lord Walker's dictum in *Pitt v Holt* [2013] UKSC 26, [2013] 2 AC 108 that 'in general it would be inappropriate for trustees to take the initiative in commencing proceedings of this nature.' ([69])

16. Hayton, Matthews and Mitchell (n 14).

creatures of statute alone. They are immutable, except in so far as the Act itself provides for them to be extended in restricted and carefully delineated circumstances.¹⁷ They are concerned solely with the effluxion of time, and not with the merits or morality of the claim or the parties. They do not engage at all with whether the passage of time has had any impact on the parties or the proposed litigation, and once expired, they present a usually insurmountable barrier. Through such inflexibility they do, however, afford a high degree of certainty.

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Laches

Laches, on the other hand, has always engaged with precisely those concerns which statutory limitation does not. The meaning of 'laches' was set out by North J in *Partridge v Partridge*,¹⁸ quoting from *Coke on Littleton*:

Laches, or *Lasches*, is an old French word for slackness or negligence, or not doing.¹⁹

Slackness and negligence obviously import a broader idea than simply the effluxion of time. Rather, laches is concerned with the conduct of the parties. First and foremost, it is trite equity that a claimant who seeks relief must do so promptly:

a Court of Equity requires that those who come to it to ask its active interposition to give them relief, should use due diligence, after there has been such

notice or knowledge as to make it inequitable to lie by²⁰

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Defining laches

It is in this dual consideration of first, the promptness and diligence with which a claim has been brought, and secondly, whether the claimant has acted inequitably, that the doctrine of laches is to be found.²¹ The most authoritative statement of principle is contained in the judgment of the Privy Council delivered by Lord Selborne in *Lindsay Petroleum v Hurd*:²²

Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of

17. Such as in cases of fraud, concealment and mistake, when the limitation period will not start to run until the claimant has discovered, or could with reasonable diligence have discovered, the fraud, concealment or mistake: Limitation Act 1980, s 32. Of course, most fraud claims will not be subject to any limitation period at all, so long as they are brought against a trustee: see text to n 5 and following.

18. [1894] 1 Ch 351 (Ch) 360.

19. Co Litt 380b.

20. *Erlanger v New Sombrero Phosphate Co* (1878) 3 App Cas 1218 (HL) 1279 (Lord Blackburn).

21. See RP Meagher, JD Heydon and MJ Leeming, *Equity: Doctrines and Remedies* (4th edn, Butterworths LexisNexis 2002) [36-005].

22. (1874) LR 5 PC 221 (PC).

justice or injustice in taking the one course or the other, so far as relates to the remedy.²³

Thus Lord Selborne considered that the essential principle was that of practical injustice: the Court will refuse a remedy where it would be practically unjust to give one, either (i) because by the claimant's conduct he has waived the right to that remedy, or (ii) if he has not waived his right, his delay has nevertheless prejudiced the other party.²⁴ More recently, Aldous LJ in the Court of Appeal in *Frawley v Neill*²⁵ has described the doctrine in more modern but similarly expansive terms:

In my view, the more modern approach should not require an inquiry as to whether the circumstances can be fitted within the confines of a preconceived formula derived from earlier cases. *The inquiry should require a broad approach, directed to ascertaining whether it would in all the circumstances be unconscionable for a party to be permitted to assert his beneficial right.* No doubt the circumstances which gave rise to a particular result in the decided cases are relevant to the question whether or not it would be conscionable or unconscionable for the relief to be asserted, but each case has to be decided on its facts applying the broad approach.²⁶ (emphasis added)

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Unconscionable delay

Laches is always fact specific, but invariably involves both (a) delay, and (b) circumstances showing that to pursue a claim would be 'unconscionable'. However, unconscionability is a word which admits of no easy definition or legal test, partly because it is found in so many different contexts, from knowing receipt²⁷ to proprietary estoppel²⁸ and the rescission of mistaken gifts.²⁹ As a test, it has been roundly criticized at the highest level as lacking clear meaning,³⁰ and yet it remains firmly embedded in English equity. This lack of clarity is doubtless in part because there is no single definition which would fit every circumstance in which unconscionability is invoked.³¹ In each different context it imports a subtly different shade of meaning, a different approach to exactly what good conscience requires. In the knowing receipt context, for example, 'unconscionable' is typically used to describe the conduct of the recipient, and if such conduct is present, personal and proprietary liabilities are imposed on the recipient.³² Whereas in the context of laches, it is the claimant's *inaction* which is assessed, in the context of whether he should be awarded the equitable (and therefore usually discretionary) relief he seeks.

The cases do provide some guidance as to the assessment of unconscionability in the context of laches. Factors to be taken into account include

the period of the delay, the extent to which the defendant's position has been prejudiced by the delay and

23. *Ibid* 239-40.

24. On the division of laches into two delay-oriented defences, see: Meagher, Heydon and Leeming (n 21) [36-010]; D O'Sullivan, S Elliott and R Zakrzewski, *The Law of Rescission* (OUP 2008) [24.17].

25. [2000] CP Rep 20 (CA).

26. This statement was approved in two subsequent Court of Appeal cases: *Patel v Shah* [2005] EWCA Civ 157 [32]-[33] (Mummery LJ); *Re Loftus* [2006] EWCA Civ 1124, [2007] 1 WLR 591 [42] (Chadwick LJ).

27. *BCCI v Akindele* [2001] Ch 437 (CA) 455.

28. *Crabb v Arun District Council* [1976] Ch 179 (CA) 195; *Taylor's Fashions Ltd v Liverpool Victoria Trustees Co Ltd* [1982] QB 133 (Ch) 151-52; *Re Basham* [1986] 1 WLR 1498 (Ch) 1504; *Gillett v Holt* [2001] Ch 210 (CA) 225, 232.

29. *Pitt v Holt* [2013] UKSC 26, [2013] 2 AC 108 [124]-[128].

30. *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378 (PC) 392 (Lord Nicholls).

31. This problem is not unique to unconscionability. Despite Lord Nicholls's preference for 'dishonesty' over 'unconscionability' in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378 (PC) being partly for reasons of clarity (at 392), the difficulties in understanding precisely what 'dishonesty' requires soon became apparent: *Twinsectra Ltd v Yardley* [2002] UKHL 12, [2002] 2 AC 164 [26]-[37] (Lord Hutton) [114]-[127] (Lord Millett).

32. On the special nature of knowing receipt as form of constructive trusteeship, rather than simply a personal liability to pay money, see C Mitchell and S Watterson, 'Remedies for Knowing Receipt' in C Mitchell (ed) *Constructive and Resulting Trusts* (Hart Publishing 2010).

the extent to which that prejudice was caused by the actions of the plaintiff.³³

The hallmarks of unconscionability appear to be either (i) prejudice to the defendant, such as where evidence has been lost or destroyed before proceedings commence³⁴ or (ii) an unfair windfall to the claimant. Of course in many cases, prejudice to the defendant and a windfall to the claimant may simply be opposite sides of the same coin.

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Equitable property

One particular area of controversy has been the extent to which laches can be relied upon to defeat claims to ownership of equitable property. In *Patel v Shah*³⁵ the Court of Appeal was urged to distinguish claims to discretionary equitable remedies, in respect of which it was conceded that laches could operate as a complete defence, from claims to enforce equitable property rights, in relation to which it was said that equity would not go so far as to deprive the owner of all relief, and so in effect all rights to his property.³⁶ The Court of Appeal was unwilling to go quite so far as to rule out a laches defence in property cases, and instead drew a fragile distinction between ‘traditional’ and ‘commercial’ trusts.³⁷ In a ‘traditional’ trust, the beneficiary is simply the recipient of a gift. He is ‘not

required or expected to do more than receive what has been given for his benefit’³⁸ and so there is very little scope for his conduct to be ‘unconscionable’. It would consequently be ‘extremely rare’³⁹ for a situation to arise in which laches could apply—though the Court of Appeal did not rule out that possibility entirely. But where, as in *Patel v Shah* itself, the context is a ‘collaborative commercial venture’⁴⁰—in this case the parties were essentially ‘trading in land’⁴¹—it was open to the Court to dismiss a claim to equitable property rights as ‘unconscionable and barred by laches’.⁴² However, whilst laches is generally available in relation to claims founded on an express trust,⁴³ it appears that it is *not* available to a bare trustee, who cannot plead it against his beneficiary.⁴⁴

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Comparison with statutory limitation

Unlike statutory limitation, laches is fact-sensitive, and responds to the conduct of the parties. Laddie J has commented that

[a]ccount is taken of the actions and behaviour of the plaintiff and defendant and sometimes the impact on third parties. It is a flexible defence.⁴⁵

In contrast, statutory limitation imposes ‘essentially arbitrary time limits’, in relation to which it does not matter that ‘in some cases it will be thought unfair that the defendant is allowed off the hook’. Rather

33. *Nelson v Rye* [1996] 1 WLR 1378 (Ch) 1392 (Laddie J).

34. *Bourne v Swan & Edgar Ltd* [1903] 1 Ch 211 (Ch) 219-20.

35. [2005] EWCA Civ 157.

36. *Ibid* [19]-[25].

37. See also: *Target Holdings Ltd v Redfern* [1996] AC 421 (HL) 435; PJ Millett, ‘Equity’s Place in the Law of Commerce’ (1998) 114 LQR 214.

38. *Patel v Shah* [2005] EWCA Civ 157 [33] (Mummery LJ).

39. *Ibid*.

40. *Ibid* [34].

41. *Ibid*.

42. *Ibid* [38].

43. *Bright v Legerton* (1861) 2 De G.F. & J. 606, 45 ER 755; *Hourigan v Trustees Executors & Agency Co Ltd* (1834) 51 CLR 619.

44. *Frawley v Neill* [2000] CP Rep 20 (CA). See also: Hayton, Matthews and Mitchell (n 6) [94.38].

45. *Nelson v Rye* [1996] 1 WLR 1378 (Ch) 1388.

the defendant 'is entitled to play possum in the hope that the plaintiff will make a mistake and fail to commence proceedings before the statutory time limit is breached.'⁴⁶ Perhaps most importantly, mere delay is not generally enough to constitute laches;⁴⁷ some action or inaction which would make it unconscionable to proceed must always be established.

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The interaction of laches and limitation

It will be apparent that laches and statutory limitation must overlap. A trustee defending a breach of trust claim brought by a beneficiary may be able to invoke both the elapse of six years since the breach⁴⁸ as well as any conduct of the beneficiary which would make it unconscionable now to pursue his claim. But the precise interaction between the two sets of very different rules has always been somewhat unclear. The structure of the Limitation Act 1980 gives rise to three possibilities.

The first and most straightforward situation is where there is no applicable statutory limitation period.⁴⁹ In that case, there can be no objection to the full application of laches in the ordinary way, since the statute has nothing to say.

The second, and more obviously difficult, case is where there *is* a statutory limitation period, usually

the six-year period prescribed by Section 21(3) of the Limitation Act 1980. On one view, laches is simply equity's default position, and if Parliament has intervened to specify a limitation period more precisely, the question of delay should be governed *exclusively* by the statute. This appears to have been the approach adopted by Wilberforce J in *Re Pauling's Settlement Trusts*,⁵⁰ in which he held that the situation in that case was governed by Section 19 of the Limitation Act 1939 (the predecessor to Section 21 of the 1980 Act), and

[t]here being an express statutory provision, providing a period of limitation for the plaintiffs' claims, there is no room for the equitable doctrine of laches.⁵¹

However, on appeal, the Court of Appeal, whilst it 'wholly agree[d]' with Wilberforce J on the Limitation Act 1939 and laches, also thought that 'acquiescence... must be looked at rather broadly'.⁵² It seems that the Court of Appeal may have intended its reference to laches to be to delay only, leaving open the possibility of relying on the equitable defence where some further factor, such as acquiescence, would make it unconscionable for proceedings to be brought. This approach would now accord with Section 36(2) of the Limitation Act 1980 which provides that:

Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

46. Ibid 1388.

47. *Jones v Stones* [1999] 1 WLR 1739 (CA); *Nelson v Rye* [1996] 1 WLR 1378 (Ch) 1392; RP Meagher, JD Heydon and MJ Leeming, *Equity: Doctrines and Remedies* (4th edn, Butterworths LexisNexis 2002) [36-010], [36-070]. But see also *P&O Nedlloyd v Arab Metals (No. 2)* [2006] EWCA Civ 1717, [2007] 1 WLR 2288, where Moore-Bick LJ left the question open, being unwilling there to

rule out the possibility that the court would regard it as inequitable to allow a claim to be pursued after a very long period of delay, even in the absence of evidence that the defendant or any third party had altered his position in the meantime. ([61])

48. See text to n 3 and following.

49. See text to n 9.

50. [1962] 1 WLR 86 (Ch).

51. Ibid 115.

52. *Re Pauling's Settlement Trusts (No 1)* [1964] Ch 303 (CA) 353 (Upjohn LJ).

This more nuanced approach has more recently found favour with the Court of Appeal in *Re Loftus*,⁵³ in which Chadwick LJ held that:

In re Pauling's Settlement Trusts is authority for the proposition that, where the Limitation Act provides an express period of limitation, a claimant is not to be denied the benefit of that period by the operation of what was, in that case, understood to be the doctrine, or defence, of laches. It is not authority for the proposition that, where the Limitation Act prescribes no period of limitation, the defence of laches cannot be invoked. *Nor, as it seems to me, is that case authority for the proposition that, where the Act prescribes a period of limitation, no defence of acquiescence (in so far as that may differ from what was, in that case, understood to be a defence of laches) can be relied upon.*⁵⁴ (emphasis added)

Similarly, in *P&O Nedlloyd v Arab Metals (No 2)*, Moore-Bick LJ said that he could

see no reason in principle why, in a case where a limitation period does apply, unjustified delay coupled with an adverse effect of some kind on the defendant or a third party should not be capable of providing a defence in the form of laches even before the expiration of the limitation period. The question for the court in each case is simply whether, having regard to the delay, its extent, the reasons for it and its consequences, it would be inequitable to grant the claimant the relief he seeks.⁵⁵

As the law stands, therefore, it would be theoretically possible to invoke laches as a defence even *before* the expiry of the six-year statutory limitation period. It is likely to be a rare case, however, in which a Court can be persuaded that prejudice arising simply from the

effluxion of time is such as to render it unconscionable for the claimant to bring proceedings, when Parliament has ordained that the Claimant may have a full six years in which to do so. Something more will invariably be required.⁵⁶

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The third, and most difficult, case is where there is no statutory limitation period, not merely because none is provided for (as in the first case), but because the Limitation Act 1980 specifically provides that there shall be no such limitation period, even if the six-year period would otherwise apply. This will primarily encompass claims against an express trustee based on fraud or the retention or conversion of trust property.⁵⁷ One approach would be to see the statutory exclusion of time limits as extending to the exclusion of laches too. Some support for this view is found in the decision of the Court of Appeal in *Gwembe Valley Development Company Ltd v Koshy*,⁵⁸ which held that:

The defence of laches is not available. As already explained no period of limitation is specified by the 1980 Act in respect of the cause of action for dishonest breach of fiduciary duty. The effect of s 21(1)(a) is that either as a result of direct application, or of analogy, there is no period of limitation applicable to that cause of action.⁵⁹

However, the better view is that subsequently expressed by Mummery LJ in *Patel v Shah*,⁶⁰ that even where Section 21(1) of the Limitation Act 1980 provides for there to be no statutory limitation

53. [2006] EWCA Civ 1124, [2007] 1 WLR 591.

54. *Ibid* [37].

55. [2006] EWCA Civ 1717, [2007] 1 WLR 2288 [61].

56. *Ibid*.

57. See text to n 5 and following.

58. [2003] EWCA Civ 1048, [2004] 1 BCLC 131.

59. *Ibid* [140] (Mummery LJ).

60. [2005] EWCA Civ 157.

period, nevertheless the effect of Section 36 is to preserve the

equitable jurisdiction to refuse relief on grounds of acquiescence or otherwise and that that would include laches.⁶¹

Gwembe Valley is accordingly better understood as being concerned with the exclusion of statutory limitation periods, and of equitable analogues to them pursuant to Section 36(1) of the Act, but not with pure laches and acquiescence, preserved by Section 36(2). This approach follows logically from the wording of Section 21(1) itself, which disapplies only any 'period of limitation prescribed by this Act'. 36(1) expressly provides for certain time limits under the Act to apply by equitable analogy, such that those periods derive their legal force from that sub-section and so can properly be characterised as 'period[s] of limitation prescribed by this Act', excluded by Section 21(1). Whereas Section 36(2), which opens with the words 'Nothing in this Act shall affect' does not itself give legal force to the equitable doctrines, but rather prevents the Act from interfering with their continued existence and effect. It is consequently clear that laches is *not* a 'period of limitation prescribed by this Act', but in so far as it is a 'period of limitation'

at all, it arises entirely outside the Act. Finally, this approach has been endorsed by the Court of Appeal in *Re Loftus*, with Chadwick LJ considering and rejecting the dictum of the Court of Appeal in *Gwembe Valley*,⁶² endorsing that in *Patel v Shah*,⁶³ and holding that

a defence of laches or acquiescence is not excluded by section 21(1)(b) of the 1980 Act.⁶⁴

The same must logically apply to Section 21(1)(a) too.

Conclusion

Limitation periods in respect of trusts and other claims in equity can be difficult to ascertain. The operation of the Limitation Act 1980 is far from straightforward, and the doctrine of laches is so flexible as to be profoundly unpredictable. The interaction of the two has produced even more difficult problems. But a sound understanding of the key principles is essential if difficulties are to be avoided. As is so often the case in equity,⁶⁵ the panacea is promptness—or as Coke would more colourfully put it, simply avoiding 'slackness or negligence'.⁶⁶

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61. Ibid [22].

62. See text to n 56.

63. See text to n 57.

64. *Re Loftus* [2006] EWCA Civ 1124, [2007] 1 WLR 591 [41]

65. And indeed elsewhere: on the crucial importance of promptness in complying with the Civil Procedure Rules, see *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, [2014] 1 WLR 795.

66. Co Litt 380b. See text to n 18 and following.