



## How long does a third party have to pursue a claim in tort and/or contract against a defendant who has died?

Service area / [Private Client, Trusts and Private Wealth](#)

Legal jurisdictions / [Jersey](#)

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Under Jersey's customary law rules, the heirs of an estate traditionally have a period of year and a day from the deceased's death or the date of the grant of probate or letters of administration to bring their claims against the deceased's estate. For this reason, an executor/administrator will normally retain the estate for a year and day before distributing it. It was uncertain, however, whether this ancient time period extended to third party claims but a recent case before the Master of the Royal Court has now clarified this area of law.

### Facts

The plaintiff brought a claim in tort and contract against three defendant doctors, for their alleged failings in the plaintiff's care, which resulted in the plaintiff being diagnosed with a stroke in 2016. As the second defendant had died by the time proceedings were instituted, the claim was brought against the executor of his estate who responded by stating that any claims in tort and/or contract against the estate were prescribed.

### Law

Although the limitation period in Jersey for claims for breaches of contract is ten years, which period starts to run from the date of the breach, the executor's advocate argued that the limitation period of a year and a day was applicable. The court disagreed on the basis that the year and a day prescription period applied to claims made by heirs against the estate of the deceased and not to those made by third party claimants.

The court referred to the Customary Law Amendment (Jersey) Law 1948, which imposes a time for claims in tort which have

to be commenced within 6 months after a grant of probate (or letters of administration) are issued in a deceased's estate and that any other causes of action, including one for a breach of contract, survive against the estate.

The executor's advocate argued that if claims against an estate were not limited to a year and a day, this could cause practical issues for executors because they could not distribute an estate. She also questioned the relevance of an executor advertising for claims, if claims could be made after a year and a day. The court responded by saying that if an executor advertised for claims in an estate and a creditor failed to respond but later sought to bring a claim, the creditor may face enforcement issues as assets of the estate could have been dissipated. In addition, heirs or legatees who have received their entitlement and are then faced with a challenge by a creditor would have grounds for relying on a change of position defence if they were no longer in receipt of the assets they had received from the estate.

### Conclusion

This case is of interest to personal representatives of Jersey movable estates in that it brings an element of clarity to the period of time within which claims a differing nature may be brought against an estate. It is now clear that the distribution of the estate after the expiration of a year and day does not act as a bar to claims, which existed prior to the death of the deceased being pursued.

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