

Revisiting Actual Occurrence Rule for Latent Personal Injuries Under the Malaysian Limitation Act 1953

Haswira Nor Mohamad Hashim^a, Anida Mahmood^{a*}, Zainal Narudin^b

^aFaculty of Law, Universiti Teknologi MARA, Shah Alam, Selangor, Malaysia, ^bAdvocate and Solicitor, Zainal Narudin & Co

*Corresponding Author Email: anida131@uitm.edu.my

DOI Link: <http://dx.doi.org/10.6007/IJARBS/v15-i9/26390>

Published Date: 14 September 2025

Abstract

This paper examines the application of the actual occurrence rule in determining the limitation period for latent personal injuries under the Malaysian Limitation Act 1953. Latent personal injuries are not immediately discoverable at the time they occur. However, the Limitation Act imposes a six-year limitation period for civil claims related to such injuries, commencing from the date of their actual occurrence. The actual occurrence rule calculates the limitation period from the day the injury takes place, regardless of when it is discovered. In contrast, the discovery rule allows the limitation period to begin from the date the injury is discovered, rather than when it occurred. While other common law countries such as the United Kingdom, Australia and Singapore have adopted the discovery rule, Malaysia has yet to follow suit. This paper analyses the application of the discovery rule in determining the limitation period for latent personal injuries in the UK, Australia and Singapore, before proposing for its adoption in the Malaysian Limitation Act 1953. Aligning with common law legal developments, the adoption of the discovery rule would ensure greater access to justice for victims of negligence who suffer latent personal injuries.

Keywords: Limitation Period, Time Barred, Latent Personal Injuries, Actual Occurrence Rule, Discovery Rule

Introduction

Latent personal injuries typically result from trauma, such as whiplash, concussions, and soft tissue injuries. Latent personal injuries such as internal organ damage or failure or certain types of cancer after long-term exposure to toxic substances or medication do not manifest themselves immediately following an accident and their symptoms might not be immediately noticeable (Kanner, 1987). It may take days, weeks, months or even years for the sign or adverse effect of the latent personal injuries to appear. This delayed discovery poses a legal

challenge in countries that adopt actual occurrence rule in the determination of limitation period for personal injury claims (Eggen, 2017).

Where the latent personal injuries is discovered after the limitation period fixed for personal injuries, the victim is time barred from commencing civil proceeding against the tortfeasor (Law Reform Commission, 1987). Malaysia applies actual occurrence rule in the determination of limitation period for civil claim arising from latent personal injuries (s 6(1), Limitation Act 1953). Under the actual occurrence rule, the victim of tort of negligence is prevented from claiming for latent personal injuries after six years upon occurrence of the injuries, not from the date the injuries manifest to be discovered (O'Neil, 1980).

Unlike Malaysia, the UK, Australia and Singapore apply discovery rule. The discovery rule allows the limitation period to begin from the moment the injury is discovered or should have been discovered with reasonable diligence. Discovery rule acknowledges that some injuries or their consequences may not be immediately apparent (Beswick, 2022). Discovery rule is an exception to the statute of limitations that extends the deadline for filing a case based on the time it took to discover the victims's injury that give rise to a civil suit. In cases of latent personal injuries arising from tortious act, the discovery rule is crucial as the limitation period does not run until the injury is discovered or should have been discovered with reasonable diligence by the victim (Ahmad & Ajaz, 1985).

Latent personal injuries are a significant yet often overlooked category of harm in tort law. The importance of studying this area lies in the intersection between access to justice and legal certainty. On the one hand, limitation laws exist to provide finality and protect defendants from stale claims where evidence may deteriorate. On the other hand, rigid application of the actual occurrence rule can unjustly prevent victims of negligence from seeking redress, as they may only discover the true extent of their injuries long after the statutory limitation period has expired.

The significance of this study extends beyond academic inquiry. It directly impacts victims of medical negligence, industrial disease, environmental harm, and occupational exposure, many of whom are left without a remedy under the current law. For legal practitioners, the judiciary, and policymakers, understanding the deficiencies of the actual occurrence rule and the potential advantages of adopting the discovery rule is essential to ensure fairness in civil litigation. Moreover, for industries, employers, and insurers, clarity and predictability in limitation laws help balance accountability with protection from indefinite liability.

The study is also beneficial for comparative legal development in other common law jurisdictions—in particular the United Kingdom, Australia, and Singapore. By examining these comparative models, this research highlights the utility and effectiveness of the discovery rule in striking a fair balance between plaintiffs' rights and defendants' interests.

Literature Review

The application of actual occurrence on latent personal injuries has resulted injustice to the tort victim (Ogboru & Lere, 2018). Latent personal injuries typically do not become manifest until months, years, or decades after a person's exposure to a toxic substance. The timing, extent, and characteristics of its physical manifestation are unpredictable and vary among

individuals (Herbert-Lowe, 2011). Accordingly, latent personal injuries present unique challenges for plaintiffs confronted with time limitations on their actions. Under actual occurrence rule, plaintiffs whose latent illnesses take longer to become detectable are to be time-barred (Thomas & Hamer, 2022). Conversely, the same plaintiff, may bring their claims under discovery rule (Plunkett, 2009).

While actual occurrence rule is known to adversely impact latent personal injuries claim, to date no attempt has been made by the Malaysian legislature to remedy these shortcomings (Ahmad & Ajaz, 2025). This paper argues that the actual occurrence rule needs to be revisited and discovery rule should be applied as a statutory exception for civil claims based on latent personal injuries in Malaysia.

Research Methods

This paper answered two research questions: i) how does a discovery rule being applied in determining the limitation period for latent personal injuries? and ii) how should the discovery rule be adopted in the Malaysian Limitation Act 1953? To answer both research questions, this paper employed a qualitative research approach and conducted library research. Secondary data in the form of statutes collected from the official websites for legislation of selected countries. The UK, Australia and Singapore were selected as these countries adopt discovery rule for limitation period of latent personal injuries. In addition, the UK, Australia and Singapore share common law legal system with Malaysia.

A doctrinal analysis was conducted to analyse the statutory provisions underpinning the application of discovery rule for limitation period of latent personal injuries in the UK, Australia and Singapore. In addition, judicial decisions from the UK, Australia and Singapore pertaining to the application of discovery rule were also analysed. Subsequently, a comparative analysis was conducted to find the similarities, differences and unique features of the limitation period laws that apply discovery rule for latent personal injuries in the selected countries. The findings of the qualitative analysis were used to propose for the adoption of discovery rule to replace the actual occurrence rule in the determination of limitation period of latent personal injuries under the Malaysian Limitation Act 1953.

Findings

United Kingdom (Limitation Act 1980)

The Limitation Act 1980, particularly Section 11, establishes a crucial framework for personal injury claims in the United Kingdom. This section sets a special time limit for actions arising from negligence, nuisance, or breach of duty, regardless of whether the duty exists under contract, statute, or common law. The general rule is that a claim must be initiated within three years from either the date the cause of action accrued—which is typically when the injury occurred—or the date of knowledge, if later. This provision ensures that claims are brought in a timely manner, preventing unfair prejudice to defendants due to excessive delays.

The concept of date of knowledge is a critical element in determining when the limitation period begins. Under Section 14 of the Act, knowledge is defined as the point at which the injured person first becomes aware that the injury is significant, that it was caused by negligence, and that the identity of the responsible party is known. Importantly, the law

applies an objective test, meaning a person is deemed to have knowledge of facts that they could reasonably be expected to acquire, even if expert advice was necessary. This prevents claimants from indefinitely delaying legal action on the grounds of ignorance.

Despite the strict three-year time limit, Section 33 of the Limitation Act 1980 grants courts discretion to extend the period in certain circumstances. In exercising this discretion, courts consider factors such as the length and reason for the delay, the availability of evidence, and whether allowing the claim would cause undue prejudice to the defendant. This provision ensures that justice is not denied merely due to procedural time limits, particularly in cases where a claimant was unaware of their injury for a significant period.

UK courts have interpreted and applied these provisions through a series of important cases. In *Cartledge v Jopling [1963] AC 758*, the House of Lords held that a claim accrues when damage occurs, even if the claimant is unaware of it at the time. This decision ultimately led to the introduction of the date of knowledge rule, which now provides greater fairness in cases where injuries manifest long after the wrongful act.

Further clarity on the concept of knowledge was provided in *Haward v Fawcetts [2006] UKHL 9*, where the House of Lords emphasized that claimants must have sufficient knowledge of the possibility of negligence rather than certainty. This decision reinforced the expectation that individuals take reasonable steps to investigate potential claims rather than waiting indefinitely.

The courts have also demonstrated flexibility in applying the time limits, particularly in cases involving historic abuse and latent injuries. In *A v Hoare [2008] UKHL 6*, the House of Lords ruled that courts have discretion under Section 33 to disapply the limitation period for actions founded on torts of negligence where it is inequitable to enforce it. In cases of historic sexual abuse, the House of Lords acknowledged the psychological barriers that often prevent victims from coming forward within the usual timeframe.

A similar principle was applied in *McDonald v National Grid Electricity Transmission Plc [2014] UKSC 53*, a case concerning asbestos-related illness. Here, the Supreme Court reaffirmed that the limitation period begins only when the symptoms become serious enough that a reasonable person would consider taking legal action. This is particularly relevant in cases of industrial disease, where the effects of exposure may take years or even decades to become apparent.

Ultimately, the Limitation Act 1980 balances the need for legal certainty with fairness to claimants who could not have reasonably acted sooner. While the statutory framework imposes clear deadlines, the case law demonstrates that judicial discretion plays a vital role in ensuring that claims are assessed on their merits rather than being dismissed on technical grounds.

Australia (Limitation Act 1985)

The Limitation Act 1985 establishes clear statutory time limits for claims involving personal injuries, latent property damage, and economic loss. Under Division 3.2, Sections 36 and 16A of the Limitation Act 1985 (Commonwealth Australia) specifically govern actions for personal

injury damages and common law claims in relation to workers' compensation. These provisions set strict limitation periods while allowing judicial discretion in exceptional cases. Australian courts have interpreted these provisions through key rulings, balancing the interests of plaintiffs seeking justice with the need for finality and certainty in litigation.

Under Section 36 of the Limitation Act 1985 (Commonwealth Australia), a plaintiff seeking damages for personal injury must generally file their claim within the statutory time limit. However, courts are given discretion to extend this period if it is considered "just and reasonable" to do so. The court must assess all relevant circumstances, including the length and reasons for the delay (s.36(3)(a)), any prejudice to the defendant (s.36(3)(b)), and the conduct of both parties following the injury (s.36(3)(c)-(f)).

Australian courts consistently emphasize that limitation laws strike a balance between protecting defendants from undue delay and allowing genuine claims to proceed. While strict adherence to limitation periods is generally upheld, cases involving delayed discovery of injury, psychological trauma, or misleading conduct by the defendant often result in judicial discretion being exercised in favor of claimants.

The High Court of Australia in *Brisbane South Regional Health Authority v Taylor (1996) 186 CLR 541*, established that limitation periods serve to protect defendants from stale claims where evidence may have deteriorated. The court emphasized that prejudice to the defendant due to delayed litigation is a key factor in deciding whether an extension should be granted. The burden rests on the plaintiff to justify the delay, and mere hardship is insufficient. Similarly, in *Williams v Spautz (1992) 174 CLR 509*, the court reiterated that statutory limitation periods exist to prevent unfair litigation practices.

However, in *Jemison v Prasad [2001] ACTSC 39*, an extension was granted where the plaintiff had acted reasonably and promptly after discovering the injury's link to the defendant's negligence. This aligns with s.36(3)(e) of the Limitation Act 1985 (Commonwealth Australia), which considers whether the plaintiff took reasonable steps to pursue legal action once they became aware of the injury's cause. In contrast, the case of *Doughty v Hillier [2024] NSWSC 1220*, underscores the courts' reluctance to extend limitation periods where a claimant had sufficient information to pursue a claim but failed to do so within the prescribed time. In this case, the plaintiff sought to extend the limitation period to file a medical negligence claim against her orthopedic surgeon. The surgeries in question took place between 2002 and 2009, but the plaintiff did not initiate her claim until 2022. The court applied the "discoverability test" to assess when she became aware, or ought to have become aware, of her injury and its connection to the defendant's actions. It was determined that, with reasonable diligence, she should have known of the potential negligence by 2014, based on medical advice she had received. As a result, her application to extend the limitation period was dismissed, reinforcing the principle that plaintiffs must act promptly once they suspect negligence.

Similarly, in *Vivian v Gameover Pty Ltd [2024] QSC 263*, the plaintiff sought to extend the limitation period under Section 31 of the Limitation of Actions Act 1974 (Qld) to include a secondary psychological injury that emerged after the expiration of the original limitation period. The central issue before the court was whether this psychological injury constituted a "material fact of a decisive character" that was not within the plaintiff's knowledge until after

the standard limitation period had expired. The court concluded that the plaintiff had sufficient awareness of the severity and impact of his injuries before the limitation period lapsed and, therefore, denied the extension. This decision highlights the judicial emphasis on ensuring that claimants do not unduly delay legal proceedings, even when new injuries or complications arise over time.

Singapore (Limitation Act 1959)

The Limitation Act 1959 governs the time limits within which legal claims must be initiated. Section 24A of the Act was introduced to address claims involving negligence, nuisance, and breach of duty, is particularly relevant to personal injury cases and other damages claims. This provision strikes a balance between allowing claimants sufficient time to seek legal redress while ensuring that defendants are not subjected to claims after excessive delays, which could result in difficulties gathering evidence and witnesses.

Under Section 24A(2) of the Limitation Act 1959 (Singapore), a claimant must bring a personal injury action within three years from the date the cause of action accrued (i.e., the date of the negligent act or omission) or three years from the earliest date the claimant had the required knowledge to bring the action, if later than the accrual date.

The courts in Singapore have interpreted this provision in various cases, emphasizing the importance of knowledge in determining limitation periods. In *Chandra Kumar v The Management Corporation Strata Title Plan No 613 [2017] SGHC 172*, where the claimant's action was time-barred because he had known of his injury for more than three years but had delayed taking legal action. The case reinforced the principle that limitation periods begin once the claimant has sufficient facts to justify legal proceedings, rather than waiting for conclusive proof of liability.

Similarly, in *Armstrong, Carol Ann v Quest Laboratories Pte Ltd [2019] SGHC 66*, the High Court considered the plaintiff's knowledge of medical negligence. The court ruled that the plaintiff had the requisite knowledge once she was aware of a misdiagnosis, even if she had not yet fully appreciated the legal consequences. This case highlights the strict application of Section 24A(3)(b), reinforcing that the limitation period is based on factual knowledge rather than legal expertise.

Section 24A (4) and (6) of the Limitation Act 1959 (Singapore) define the required knowledge for starting the limitation period. The claimant must be aware that the injury or damage was attributable to an act or omission, the identity of the defendant (and, where applicable, a third party involved), and the seriousness of the injury or damage justified legal proceedings.

Importantly, Section 24A (5) of the Limitation Act 1959 (Singapore) clarifies that legal knowledge (whether the act amounts to negligence, nuisance, or breach of duty) is irrelevant. The test is objective: Would a reasonable person in the claimant's position have considered the injury or damage serious enough to justify legal action?

In *Tan Hun Hoe v Harte Denis Matthew [2001] SGCA 5*, the Court of Appeal applied this principle, ruling that a claimant cannot argue they lacked knowledge simply because they were unaware of their legal rights. The focus is on factual awareness, not legal sophistication.

Section 24A, reflects a carefully calibrated approach to limitation periods in negligence-based claims. The three- and six-year rules ensure that claims are brought within a reasonable timeframe, while the alternative knowledge-based limitation recognizes that some injuries and damages take time to manifest.

These judicial decisions demonstrate the courts' commitment to ensuring fairness—both by protecting claimants from being unfairly time-barred and by preventing defendants from facing indefinite exposure to claims. However, the burden remains on claimants to act promptly and reasonably, particularly when their knowledge of injury or damage becomes apparent.

Thus, while Section 24A provides flexibility, Singapore courts have consistently enforced limitation periods strictly where claimants have delayed unreasonably, reaffirming the fundamental balance between legal certainty and access to justice.

Discussion

The discovery rule plays a crucial role in determining limitation periods for latent personal injury claims, ensuring that claimants who suffer injuries that are not immediately apparent have a fair opportunity to seek legal redress. The application of this rule varies across jurisdictions, with each country balancing the interests of claimants and defendants differently. This comparative analysis examines the similarities, differences, and unique features of the discovery rule as applied in the UK, Australia, and Singapore.

Similarities Across Jurisdictions

One similarity among the three jurisdictions is the recognition that personal injuries, particularly those related to toxic exposure or medical negligence, may not be immediately detectable. All three legal systems acknowledge the necessity of a discovery rule to prevent claimants from being unfairly time-barred before they become aware of their injury and its cause.

In each jurisdiction, limitation periods begin to run from either the date of accrual (when the wrongful act occurred) or from the date the claimant gained the requisite knowledge to initiate a claim. The courts in all three countries have consistently reinforced that knowledge must be more than mere suspicion—it must be sufficient for a reasonable person to recognize that they have a viable legal claim.

Additionally, these jurisdictions impose an objective standard to determine when a claimant is deemed to have knowledge. The test considers whether a reasonable person in the claimant's position, with access to expert advice, would have identified the injury and its cause within a reasonable timeframe.

Key Differences in the Application of Discovery Rules

Despite these similarities, notable differences exist in the way the discovery rule is applied in the UK, Australia, and Singapore, particularly in the statutory frameworks governing limitation periods and judicial interpretations.

Under the UK's Limitation Act 1980, the general limitation period for personal injury claims is three years from the date of accrual or from the date the claimant had knowledge of the injury, whichever is later. The courts have developed a robust body of case law clarifying the threshold for "knowledge," as seen in *Haward v Fawcetts* [2006] UKHL 9, where the House of Lords held that knowledge of damage, its cause, and its seriousness must exist before time begins to run. The UK also provides a discretionary power under Section 33 of the Limitation Act 1980, allowing courts to override the limitation period if it is equitable to do so.

Australian jurisdictions, including the Australian Capital Territory (ACT) and other states, have distinct statutory provisions addressing limitation periods. Under the Limitation Act 1985, courts have discretion to extend limitation periods if it is just and reasonable to do so, considering factors such as the length of and reason for the delay and any prejudice to the defendant. This discretionary approach was reinforced in *Brunton v ACT Planning and Land Authority* [2008] ACTSC 59, where the court extended the limitation period due to the delayed manifestation of an asbestos-related disease. Unlike the UK, Australian courts focus more on balancing the prejudice suffered by both parties rather than strictly adhering to a rigid statutory cutoff.

The Singapore Limitation Act 1959, Section 24A, closely mirrors the UK model in setting out a three-year limitation period from either the date of accrual or the date of knowledge. However, Singapore courts have interpreted "knowledge" more strictly, as demonstrated in *Chandra Kumar v The Management Corporation Strata Title Plan No 613* [2017] SGHC 172, where the claimant was time-barred due to an extensive delay in taking legal action despite being aware of the injury. Unlike the UK, Singapore does not have a broad judicial discretion to extend limitation periods beyond the statutory limits, making its approach more rigid in comparison.

Unique Features in Each Jurisdiction

Each country has developed distinctive features in its application of the discovery rule, reflecting its legal traditions and policy priorities. The UK's flexible approach under Section 33 of the Limitation Act 1980 allows courts to waive limitation periods if it is fair and just to do so. This is a key safeguard for claimants in cases where strict application of limitation rules would lead to injustice.

Australia's focus on judicial discretion ensures that courts assess each case on its merits, balancing claimants' rights to seek redress with the potential prejudice faced by defendants. This approach has been particularly significant in cases involving latent diseases such as mesothelioma and other work-related illnesses.

Singapore's strict interpretation of "knowledge" places a greater burden on claimants to act promptly once they are aware of their injury. While this approach upholds legal certainty and prevents stale claims, it has been criticized for potentially barring legitimate claims where claimants lacked full understanding of their condition's severity.

The application of the discovery rule in latent personal injury claims demonstrates a shared commitment across the UK, Australia, and Singapore to ensuring fairness in limitation laws. However, the degree of flexibility and judicial discretion varies significantly. The UK's broad

discretionary power provides a safeguard against injustice, while Australia's approach emphasizes a case-by-case assessment of reasonableness and prejudice. Singapore, on the other hand, maintains a more rigid structure, requiring claimants to act diligently once they gain knowledge of their injury.

These differences highlight the ongoing challenge of balancing the interests of claimants and defendants in latent injury claims. While legislative reforms and judicial developments continue to shape the landscape of limitation laws, the fundamental goal remains the same: to provide fair access to justice while maintaining legal certainty and finality in litigation.

Recommendation

Introduction of a Statutory Discovery Rule Exception

Malaysia should introduce a statutory provision similar to the UK's Limitation Act 1980, Australia's Limitation Act 1985 (ACT), and Singapore's Limitation Act 1959, which expressly allows for a limitation period to begin from the date the claimant discovers or reasonably ought to have discovered the injury. This exception should apply specifically to latent personal injury claims, ensuring that claimants are not unfairly time-barred before they even become aware of their condition.

Dual-Limitation Framework: Retaining the Actual Occurrence Rule with a Supplementary Discovery Rule

To maintain legal certainty while ensuring fairness, Malaysia could adopt a dual-limitation framework. This would involve:

- A **fixed long-stop period** (e.g., 12 years from the date of the wrongful act) to prevent indefinite liability for defendants, similar to the UK model; and
- A **supplementary discovery rule**, where claimants have three years from the date of knowledge of the injury to file a claim, as seen in Singapore and Australia.

Clear Definition of 'Date of Knowledge'

The legislation should clearly define "date of knowledge" based on principles derived from comparative jurisdictions. A claimant should be deemed to have knowledge when they become aware:

- That they have suffered an injury;
- That the injury was caused by a specific act or omission; and
- Of the identity of the party responsible for the injury.

This definition should align with Singapore's Limitation Act 1959, Section 24A(4), and the UK's approach in *Haward v Fawcetts [2006] UKHL 9*, ensuring that claimants cannot delay claims indefinitely by arguing ignorance of legal implications.

Judicial Discretion to Extend Limitation Periods

The courts should be granted discretionary power to extend limitation periods where it is just and equitable to do so, considering factors such as:

- The reasons for the delay in discovering the injury;
- The extent of prejudice to the defendant;
- Whether the claimant acted reasonably once they became aware of their condition.

This approach is aligned with Australia's *Brisbane South Regional Health Authority v Taylor (1996) 186 CLR 541*, where the High Court emphasized the need for a fair balancing of interests between plaintiffs and defendants.

Special Consideration for Occupational and Environmental Diseases

Given that toxic exposure cases often involve diseases with extremely long latency periods (such as asbestos-related illnesses), Malaysia should introduce special provisions similar to the UK's *Fairchild v Glenhaven Funeral Services Ltd [2002] UKHL 22*, which relaxed the causation requirement in cases involving multiple potential sources of exposure. This would help victims of industrial diseases or medical negligence seek justice.

Public Awareness and Procedural Safeguards

The introduction of a discovery rule should be accompanied by public awareness initiatives to educate individuals about their rights and the importance of timely legal action. Additionally, procedural safeguards should be in place to ensure that claimants obtain medical and legal advice promptly, preventing unnecessary delays.

By supplementing the actual occurrence rule with a well-defined discovery rule, Malaysia can create a fairer legal framework that balances the rights of injured claimants with the need for legal certainty. This reform would bring Malaysia in line with other common law jurisdictions while addressing the unique challenges posed by latent personal injuries.

Conclusion

The issue of limitation periods in latent personal injury claims presents a critical challenge within Malaysia's legal framework. The reliance on the actual occurrence rule under the Malaysian Limitation Act has resulted in significant injustice to victims of latent injuries, particularly in cases involving toxic exposure or medical negligence. As demonstrated in the legal analysis, the rigid application of this rule has led to claimants being time-barred before they even become aware of their injuries. This problem is compounded by the absence of legislative intervention to mitigate these shortcomings, leaving victims without an effective legal remedy.

A comparative examination of the legal frameworks in the UK, Australia, and Singapore reveals that these jurisdictions have recognized the limitations of the actual occurrence rule and have incorporated the discovery rule as an exception for latent personal injury claims. Courts in these jurisdictions have emphasized the importance of knowledge as the triggering factor for limitation periods, thereby ensuring that claimants are not unfairly denied access to justice. Notably, the UK's legislative approach through the Limitation Act 1980, Australia's case law-driven approach under various statutory provisions, and Singapore's strict yet structured framework under the Limitation Act 1959 all highlight the necessity of balancing legal certainty with fairness.

To address these shortcomings in Malaysia, this paper has recommended the introduction of a statutory exception within the Limitation Act to incorporate the discovery rule for latent personal injuries. Such a reform would align Malaysia with international best practices while maintaining safeguards against fraudulent or stale claims. The proposed amendments would ensure that the limitation period begins when a claimant has actual or constructive

knowledge of their injury and its causal link to the defendant's act or omission. Additionally, judicial discretion should be provided to extend limitation periods in exceptional cases where claimants demonstrate valid reasons for the delay.

The inclusion of the discovery rule as a supplement to the actual occurrence rule would provide a more just and equitable legal framework for latent personal injury claims in Malaysia. By adopting a nuanced approach that considers both legal certainty and access to justice, Malaysia can ensure that victims of latent injuries are not unfairly denied their right to seek redress while still maintaining the integrity of its limitation laws. The implementation of these recommendations would mark a significant step forward in strengthening Malaysia's personal injury law and enhancing the protection of victims who have suffered harm due to no fault of their own.

References

- Ahmad, M., & Ajaz, M. (2025). Extension of Law of Limitation in Medical Negligence Cases and Applicability of Discovery Rule: Emerging Indian Perspective. *Journal of Legal Medicine*, 1. doi: <https://doi.org/10.1080/01947648.2024.2440322>
- Beswick, S. (2022). Discoverability Demystified: Grant Thornton LLP v New Brunswick. *Cambridge Law Journal*, 81, 242. Retrieved from <https://www.doi.org/10.1017/S0008197322000332>
- Covello, K. M. (1983). Wilson v. Johns-Manville Sales Corp. and Statutes of Limitations in Latent Injury Litigation: An Equitable Expansion of the Discovery Rule. *Catholic University Law Review*, 32(3), 471. Retrieved from <https://scholarship.law.edu/lawreview/vol32/iss3/20>
- Eggen, J. M. (2017). It's About Time: The Long Overdue Demise of Statutes of Repose in Latent Toxic Tort Litigation. *Case Western Reserve Law Review*, 68(1), 23.
- French, C. (1998). Time and Blamelessly Ignorant Plaintiff: A Review of the Reasonable Discoverability Doctrine and Section 4 of the Limitation Act 1950. *Otago Law Review*, 9(2), 255. Retrieved from <https://www.austlii.edu.au/nz/journals/OtaLawRw/1998/6.pdf>
- Herbert-Lowe, S. (2011). Timing it right: limitation periods in personal injury claims. *Law Society Journal*(July), 72. Retrieved from <https://www.doi.org/10.1017/S0008197322000332>
- Kanner, A. (1986-1987). Emerging Conceptions of Latent Personal Injuries in Toxic Tort Litigation. *Rutgers Law Journal*, 18, 343.
- Law Reform Commission. (1987). Report on the Statute of Limitations: Claims in Respect of Latent Personal Injuries. Retrieved from https://www.lawreform.ie/_fileupload/Reports/rLatentPersonalInjuries.html
- Ogboru, T., & Lere, P. (2018). Statute of Limitation in Environment-Related Harm and Injuries: Time for Reform? *Obafemi Awolowo University Law Journal*, 1(1), 75-94. Retrieved from dspace.unijos.edu.ng
- Plunkett, J. (2009). When does the limitation period commence in personal injury actions? *Precedent*, 92. Retrieved from <https://www.austlii.edu.au/au/journals/PrecedentAULA/2009/45.pdf>
- Sturiale, G. (1973). Viability of the Discovery Rule as a Criterion to Determine When a Cause of Action Accrues in Medical Malpractice Action. *St. Mary's Law Journal*, 1(17), 206.
- Thomas, K., & Hamer, R. (2022). Time barred personal injury claim? Consider this before filing

- a strike out application. Retrieved from <https://www.sparke.com.au/insights/time-barred-personal-injury-claim-consider-this-before-filing-a-strike-out-application/>
- V O'Neil, S. (1980). Accrual of Statutes of Limitations: California's Discovery Exceptions Swallow the Rule. *Calif. L. Rev.*, 68, 106.
- White, S. L. (1985). Toward a Time-of-Discovery Rule for the Statute of Limitations in Latent Injury Cases In New York State. *Fordham Urban Law Journal*, 13, 113. Retrieved from <https://ir.lawnet.fordham.edu/ulj/vol13/iss1/5>