



# Prescription and Limitation (Scotland) Act 1973

## 1973 CHAPTER 52

An Act to replace the Prescription Acts of 1469, 1474 and 1617 and make new provision in the law of Scotland with respect to the establishment and definition by positive prescription of title to interests in land and of positive servitudes and public rights of way, and with respect to the extinction of rights and obligations by negative prescription; to repeal certain enactments relating to limitation of proof; to re-enact with modifications certain enactments relating to the time-limits for bringing legal proceedings where damages are claimed which consist of or include damages or solatium in respect of personal injuries or in respect of a person's death and the time-limit for claiming contribution between wrongdoers; and for purposes connected with the matters aforesaid. [25th July 1973]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### PRESCRIPTION

##### *Positive prescription*

#### **1 Interests in land: general**

- (1) If in the case of an interest in particular land, being an interest to which this section applies.—

- (a) the interest has been possessed by any person, or by any person and his successors, for a continuous period of ten years openly, peaceably and without any judicial interruption, and
- (b) the possession was founded on, and followed the recording of, a deed which is sufficient in respect of its terms to constitute in favour of that person a title to that interest in the particular land, or in land of a description habile to include the particular land,

then, as from the expiration of the said period, the validity of the title so far as relating to the said interest in the particular land shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.

- (2) This section applies to any interest in land the title to which can competently be recorded.
- (3) In the computation of a prescriptive period for the purposes of this section in a case where the deed in question is a decree of adjudication for debt, any period before the expiry of the legal shall be disregarded.
- (4) Where in any question involving an interest in any foreshore or in any salmon fishings this section is pled against the Crown as owner of the regalia, subsection (1) above shall have effect as if for the words " ten years " there were substituted the words " twenty years ".
- (5) This section is without prejudice to the operation of section 2 of this Act.

## **2 Interests in land: special cases**

- (1) If in the case of an interest in particular land, being an interest to which this section applies.—
  - (a) the interest has been possessed by any person, or by any person and his successors, for a continuous period of twenty years openly, peaceably and without any judicial interruption, and
  - (b) the possession was founded on, and followed the execution of, a deed (whether recorded or not) which is sufficient in respect of its terms to constitute in favour of that person a title to that interest in the particular land, or in land of a description habile to include the particular land,

then, as from the expiration of the said period, the validity of the title so far as relating to the said interest in the particular land shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.
- (2) This section applies—
  - (a) to the interest in land of the lessee under a lease;
  - (b) to any interest in allodial land;
  - (c) to any other interest in land the title to which is of a kind which, under the law in force immediately before the commencement of this Part of this Act, was sufficient to form a foundation for positive prescription without the deed constituting the tide having been recorded.
- (3) This section is without prejudice to the operation of section 1 of this Act.

## **3 Positive servitudes and public rights of way**

- (1) If in the case of a positive servitude over land—

- (a) the servitude has been possessed for a continuous period of twenty years openly, peaceably and without any judicial interruption, and
- (b) the possession was founded on, and followed the execution of, a deed which is sufficient in respect of its terms (whether expressly or by implication) to constitute the servitude,

then, as from the expiration of the said period, the validity of the servitude as so constituted shall be exempt from challenge except on the ground that the deed is invalid *ex facie* or was forged.

- (2) If a positive servitude over land has been possessed for a continuous period of twenty years openly, peaceably and without judicial interruption, then, as from the expiration of that period, the existence of the servitude as so possessed shall be exempt from challenge.
- (3) If a public right of way over land has been possessed by the public for a continuous period of twenty years openly, peaceably and without judicial interruption, then, as from the expiration of that period, the existence of the right of way as so possessed shall be exempt from challenge.
- (4) References in subsections (1) and (2) of this section to possession of a servitude are references to possession of the servitude by any person in possession of the relative dominant tenement.
- (5) This section is without prejudice to the operation of section 7 of this Act.

#### **4 Judicial interruption of periods of possession for purposes of sections 1, 2 and 3**

- (1) In sections 1, 2 and 3 of this Act references to a judicial interruption, in relation to possession, are references to the making in appropriate proceedings, by any person having a proper interest to do so, of a claim which challenges the possession in question.
- (2) In this section " appropriate proceedings " means—
  - (a) any proceedings in a court of competent jurisdiction in Scotland or elsewhere, except proceedings in the Court of Session initiated by a summons which is not subsequently called;
  - (b) any arbitration in Scotland ;
  - (c) any arbitration in a country other than Scotland, being an arbitration an award in which would be enforceable in Scotland.
- (3) The date of a judicial interruption shall be taken to be—
  - (a) where the claim has been made in an arbitration and the nature of the claim has been stated in a preliminary notice relating to that arbitration, the date when the preliminary notice was served;
  - (b) in any other case, the date when the claim was made.
- (4) In the foregoing subsection " preliminary notice " in relation to an arbitration means a notice served by one party to the arbitration on the other party or parties requiring him or them to appoint an arbiter or to agree to the appointment of an arbiter, or, where the arbitration agreement or any relevant enactment provides that the reference shall be to a person therein named or designated, a notice requiring him or them to submit the dispute to the person so named or designated.

## 5 Further provisions supplementary to sections 1, 2 and 3

- (1) In sections 1, 2 and 3 of this Act " deed " includes a judicial decree; and for the purposes of the said sections any of the following, namely an instrument of sasine, a notarial instrument and a notice of title, which narrates or declares that a person has a title to an interest in land shall be treated as a deed sufficient to constitute that title in favour of that person.
- (2) Where a deed has been at any time *ex facie* invalid by reason of an informality of execution within the meaning of section 39 of the Conveyancing (Scotland) Act 1874, but the appropriate court has subsequently declared, in pursuance of that section, that it was subscribed by the granter or maker and the witnesses, the deed shall be deemed for the purposes of the said sections 1, 2 and 3 not to be, and not at any time to have been, *ex facie* invalid by reason of any such informality of execution.

### *Negative Prescription*

## 6 Extinction of obligations by prescriptive periods of five years

- (1) If, after the appropriate date, an obligation to which this section applies has subsisted for a continuous period of five years—
  - (a) without any relevant claim having been made in relation to the obligation, and
  - (b) without the subsistence of the obligation having been relevantly acknowledged, then as from the expiration of that period the obligation shall be extinguished:

Provided that in its application to an obligation under a bill of exchange or a promissory note this subsection shall have effect as if paragraph (b) thereof were omitted.

- (2) Schedule 1 to this Act shall have effect for defining the obligations to which this section applies.
- (3) In subsection (1) above the reference to the appropriate date, in relation to an obligation of any kind specified in Schedule 2 to this Act is a reference to the date specified in that Schedule in relation to obligations of that kind, and in relation to an obligation of any other kind is a reference to the date when the obligation became enforceable.
- (4) In the computation of a prescriptive period in relation to any obligation for the purposes of this section—
  - (a) any period during which by reason of—
    - (i) fraud on the part of the debtor or any person acting on his behalf, or
    - (ii) error induced by words or conduct of the debtor or any person acting on his behalf, the creditor was induced to refrain from making a relevant claim in relation to the obligation, and
  - (b) any period during which the original creditor (while he is the creditor) was under legal disability,

shall not be reckoned as, or as part of, the prescriptive period;

Provided that any period such as is mentioned in paragraph (a) of this subsection shall not include any time occurring after the creditor could with reasonable diligence have discovered the fraud or error, as the case may be, referred to in that paragraph.

- (5) Any period such as is mentioned in paragraph (a) or (b) of subsection (4) of this section shall not be regarded as separating the time immediately before it from the time immediately after it.

## **7 Extinction of obligations by prescriptive periods of twenty years**

- (1) If, after the date when any obligation to which this section applies has become enforceable, the obligation has subsisted for a continuous period of twenty years—
- (a) without any relevant claim having been made in relation to the obligation, and
  - (b) without the subsistence of the obligation having been relevantly acknowledged,

then as from the expiration of that period the obligation shall be extinguished :

Provided that in its application to an obligation under a bill of exchange or a promissory note this subsection shall have effect as if paragraph (b) thereof were omitted.

- (2) This section applies to an obligation of any kind (including an obligation to which section 6 of this Act applies), not being an obligation specified in Schedule 3 to this Act as an imprescriptible obligation.

## **8 Extinction of other rights relating to property by prescriptive periods of twenty years**

- (1) If, after the date when any right to which this section applies has become exercisable or enforceable, the right has subsisted for a continuous period of twenty years unexercised or unenforced, and without any relevant claim in relation to it having been made, then as from the expiration of that period the right shall be extinguished.
- (2) This section applies to any right relating to property, whether heritable or moveable, not being a right specified in Schedule 3 to this Act as an imprescriptible right or falling within section 6 or 7 of this Act as being a right correlative to an obligation to which either of those sections applies.

## **9 Definition of " relevant claim " for purposes of sections 6, 7 and 8**

- (1) In sections 6 and 7 of this Act the expression " relevant claim ", in relation to an obligation, means a claim made by or on behalf of the creditor for implement or part-implement of the obligation, being a claim made—
- (a) in appropriate proceedings, or
  - (b) by such procedure as is mentioned in section 105 of the Bankruptcy (Scotland) Act 1913 (which relates to the interruption of prescription by certain proceedings) including that section as applied by section 318 of the Companies Act 1948;

and for the purposes of the said sections 6 and 7 the execution by or on behalf of the creditor in an obligation of any form of diligence directed to the enforcement of the obligation shall be deemed to be a relevant claim in relation to the obligation.

- (2) In section 8 of this Act the expression " relevant claim ", in relation to a right, means a claim made in appropriate proceedings by or on behalf of the creditor to establish the right or to contest any claim to a right inconsistent therewith.

- (3) Where a claim which, in accordance with the foregoing provisions of this section, is a relevant claim for the purposes of section 6, 7 or 8 of this Act is made in an arbitration, and the nature of the claim has been stated in a preliminary notice relating to that arbitration, the date when the notice was served shall be taken for those purposes to be the date of the making of the claim.
- (4) In this section the expression " appropriate proceedings " and, in relation to an arbitration, the expression " preliminary notice " have the same meanings as in section 4 of this Act.

## **10 Relevant acknowledgment for purposes of sections 6 and 7**

- (1) The subsistence of an obligation shall be regarded for the purposes of sections 6 and 7 of (this Act as having been relevantly acknowledged if, and only if, either of the following conditions is satisfied, namely—
  - (a) that there has been such performance by or on behalf of the debtor towards implement of the obligation as clearly indicates that the obligation still subsists;
  - (b) that there has been made by or on behalf of the debtor to the creditor or his agent an unequivocal written admission clearly acknowledging that the obligation still subsists.
- (2) Subject to subsection (3) below, where two or more persons are bound jointly by an obligation so that each is liable for the whole, and the subsistence of the obligation has been relevantly acknowledged by or on behalf of one of those persons then—
  - (a) if the acknowledgment is made in the manner specified in paragraph (a) of the foregoing subsection it shall have effect for the purposes of the said sections 6 and 7 as respects the liability of each of those persons, and
  - (b) if it is made in the manner specified in paragraph (b) of that subsection it shall have effect for those purposes only as respects the liability of the person who makes it.
- (3) Where the subsistence of an obligation affecting a trust estate has been relevantly acknowledged by or on behalf of one of two or more co-trustees in the manner specified in paragraph (a) or (b) of subsection (1) of this section, the acknowledgment shall have effect for the purposes of the said sections 6 and 7 as respects the liability of the trust estate and any liability of each of the trustees.
- (4) In this section references to performance in relation to an obligation include, where the nature of the obligation so requires, references to refraining from doing something and to permitting or suffering something to be done or maintained.

## **11 Obligations to make reparation**

- (1) Subject to subsections (2) and (3) below, any obligation (whether arising from any enactment, or from any rule of law or from, or by reason of any breach of, a contract or promise) to make reparation for loss, injury or damage caused by an act, neglect or default shall be regarded for the purposes of section 6 of this Act as having become enforceable on the date when the loss, injury or damage occurred.
- (2) Where as a result of a continuing act, neglect or default loss, injury or damage has occurred before the cessation of the act, neglect or default the loss, injury or damage

shall be deemed for the purposes of subsection (1) above to have occurred on the date when the act, neglect or default ceased.

- (3) In relation to a case where on the date referred to in subsection (1) above (or, as the case may be, that subsection as modified by subsection (2) above) the creditor was not aware, and could not with reasonable diligence have been aware, that loss, injury or damage caused as aforesaid had occurred, the said subsection (1) shall have effect as if for the reference therein to that date there were substituted a reference to the date when the creditor first became, or could with reasonable diligence have become, so aware.
- (4) Subsections (1) and (2) above (with the omission of any reference therein to subsection (3) above) shall have effect for the purposes of section 7 of this Act as they have effect for the purposes of section 6 of this Act; and in the said subsections (1) and (2), as they have effect for the purposes of the said section 7, "injury" includes personal injuries within the meaning of Part II of -this Act.

## 12 Savings

- (1) Where by virtue of any enactment passed or made before the passing of this Act a claim to establish a right or enforce implement of an obligation may be made only within a period of limitation specified in or determined under the enactment, and, by the expiration of a prescriptive period determined under section 6, 7 or 8 of this Act the right or obligation would, apart from this subsection, be extinguished before the expiration of the period of limitation, the said section shall have effect as if the relevant prescriptive period were extended so that it expires—
  - (a) on the date when the period of limitation expires, or
  - (b) if on that date any such claim made within that period has not been finally disposed of, on the date when the claim is so disposed of.
- (2) Nothing in section 6, 7 or 8 of this Act shall be construed so as to exempt any deed from challenge at any time on the ground that it is invalid *ex facie* or was forged.

## 13 Prohibition of contracting out

Any provision in any agreement purporting to provide in relation to any right or obligation that section 6, 7 or 8 of this Act shall not have effect shall be null.

### *General*

## 14 Computation of prescriptive periods

- (1) In the computation of a prescriptive period for the purposes of any provision of this Part of this Act—
  - (a) time occurring before the commencement of this Part of this Act shall be reckonable towards the prescriptive period in like manner as time occurring thereafter, but subject to the restriction that any time reckoned under this paragraph shall be less than the prescriptive period;
  - (b) any time during which any person against whom the provision is pled was under legal disability shall (except so far as otherwise provided by section 6(4) of this Act) be reckoned as if the person were free from that disability;
  - (c) if the commencement of the prescriptive period would, apart from this paragraph, fall at a time in any day other than the beginning of the day, the

period shall be deemed to have commenced at the beginning of the next following day;

- (d) if the last day of the prescriptive period would, apart from this paragraph, be a holiday, the period shall, notwithstanding anything in the said provision, be extended to include any immediately succeeding day which is a holiday, any further immediately succeeding days which are holidays, and the next succeeding day which is not a holiday ;
  - (e) save as otherwise provided in this Part of this Act regard shall be had to the like principles as immediately before the commencement of this Part of this Act were applicable to the computation of periods of prescription for the purposes of the Prescription Act 1617.
- (2) In this section " holiday " means a day of any of the following descriptions, namely, a Saturday, a Sunday and a day which, in Scotland, is a bank holiday under the Banking and Financial Dealings Act 1971.

## 15 Interpretation of Part I

- (1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, namely—

" bill of exchange " has the same meaning as it has for the purposes of the Bills of Exchange Act 1882;

" date of execution ", in relation to a deed executed on several dates, means the last of those dates;

" enactment " includes an order, regulation, rule or other instrument having effect by virtue of an Act;

" holiday " has the meaning assigned to it by section 14 of this Act;

" interest in land " does not include a servitude ;

" land " includes heritable property of any description;

" lease " includes a sub-lease;

" legal disability " means legal disability by reason of nonage or unsoundness of mind ;

" possession " includes civil possession, and " possessed " shall be construed accordingly ;

" prescriptive period " means a period required for the operation of section 1, 2, 3, 6, 1 or 8 of this Act;

" promissory note " has the same meaning as it has for the purposes of the Bills of Exchange Act 1882;

" trustee " includes any person holding property in a fiduciary capacity for another and, without prejudice to that generality, includes a trustee within the meaning of the Trusts (Scotland) Act 1921 ; and " trust " shall be construed accordingly ;

and references to the recording of a deed are references to the recording thereof in the General Register of Sasines.

- (2) In this Part of this Act, unless the context otherwise requires, any reference to an obligation or to a right includes a reference to the right or, as the case may be, to the obligation (if any), correlative thereto.



- (3) In this Part of this Act any reference to an enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended, and as including a reference thereto as applied, by or under any other enactment.

## **16 Amendments and repeals related to Part I**

- (1) The enactment specified in Part I of Schedule 4 to this Act shall have effect subject to the amendment there specified, being an amendment related to this Part of this Act.
- (2) Subject to the next following subsection, the enactments specified in Part I of Schedule 5 to this Act (which includes certain enactments relating to the limitation of proof) are hereby repealed to the extent specified in column 3 of that Schedule.
- (3) Where by virtue of any Act repealed by this section the subsistence of an obligation in force at the date of the commencement of this Part of this Act was immediately before that date, by reason of the passage of time, provable only by the writ or oath of the debtor the subsistence of the obligation shall (notwithstanding anything in section 38 of the Interpretation Act 1889, which relates to the effect of repeals) as from that date be provable as if the said repealed Act had not passed.

## **PART II**

### **LIMITATION OF ACTIONS**

## **17 General provision as to limitation of actions**

- (1) No action of damages where the damages claimed consist of or include damages or solatium in respect of personal injuries to any person shall be brought against any person unless it is commenced—
- (a) in the case of an action brought by or on behalf of a person in respect of injuries sustained by him as a result of any act, neglect or default, before the expiration of three years from the date when the injuries were sustained or, where such act, neglect or default was a continuing one, from that date or the date on which the act, neglect or default ceased, whichever is the later;
  - (b) in the case of an action brought by or on behalf of a person to whom a right of action has accrued on the death of another person in consequence of injuries sustained by that other person, before the expiration of three years from the date of that death:

Provided that for the purposes of paragraph (b) of this subsection a right of action shall be deemed not to have accrued to a person on the death of another person by whom injuries have been sustained if that other person or someone on his behalf was not, immediately before his death, himself entitled to bring or continue an action in respect of the injuries.

- (2) If on the date when any right of action accrued for which a period of limitation is prescribed by the foregoing subsection the person to whom it accrued was under legal disability by reason of nonage, or if on that date the said person was or became under legal disability by reason of unsoundness of mind, and in either case that person was not in the custody of a parent, the action may be brought at any time before the expiration of three years from the date when the person ceased to be under disability, notwithstanding that the period of limitation has expired.

For the purposes of this subsection "parent" includes a stepparent and a grandparent and in deducing any relationship an illegitimate person and a person adopted in pursuance of any enactment shall be treated as the legitimate child of his mother or, as the case may be, of his adoptor.

### **18 Extension of time-limit for certain actions**

- (1) Section 17(1) of this Act shall not afford any defence to an action to which this section applies, in so far as the action relates to any right of action in respect of which the requirements of subsection (3) of this section are fulfilled.
- (2) This section applies to any action of damages where the damages claimed consist of, or include, damages or solatium in respect of personal injuries sustained by the pursuer or any other person, not being an action to which section 19 of this Act applies.
- (3) The requirements of this subsection are fulfilled in relation to a right of action if it is proved that the material facts relating to that right of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the pursuer until a date which was not earlier than three years before the date on which the action was brought.
- (4) Nothing in this section shall be construed as excluding or otherwise affecting—
  - (a) any defence which, in any action to which this section applies, may be available by virtue of any enactment other than section 17(1) of this Act (whether it is an enactment imposing a period of limitation or not) or by virtue of any rule of law, or
  - (b) the operation of any enactment or rule of law which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the right of action accrued.

### **19 Extension of time-limit for certain actions brought after death of injured person**

- (1) Section 17(1) of this Act shall not afford any defence to an action to which this section applies, in so far as the action relates to any right of action in respect of which the requirements of subsection (3) of this section are fulfilled.
- (2) This section applies to any action of damages where the damages claimed consist of, or include, damages or solatium in respect of personal injuries sustained by the pursuer or any other person, being an action brought by or on behalf of a person to whom a right of action has (apart from subsection (5) of this section) accrued on the death of another person (in this section referred to as "the deceased") in consequence of personal injuries sustained by the deceased.
- (3) The requirements of this subsection are fulfilled in relation to a right of action if—
  - (a) it is proved that the material facts relating to the right of action were or included facts of a decisive character which were outside the knowledge (actual or constructive) of the deceased at all times until—
    - (i) his death; or
    - (ii) a date less than three years before his death; or
    - (iii) where the deceased had brought, and immediately before his death was continuing, an action in respect of personal injuries sustained by

him, a date not earlier than three years before the date on which that action was brought; and

- (b) either—
  - (i) the action was brought not later than three years after the death of the deceased ; or
  - (ii) it is proved that the said facts of a decisive character were at all relevant times outside the knowledge (actual or constructive) of each relevant person until a date which was not earlier than three years before the date on which the action was brought.

(4) In subsection (3) of this section " relevant person" means—

- (a) in relation to an action in respect of a right of action forming part of the estate of a deceased person, any person who is or has been a personal representative of the deceased, including an executor who has not been confirmed as such; and for the purposes of this paragraph regard shall be had to any knowledge acquired by any such person while a personal representative or previously;
- (b) in relation to an action brought by or on behalf of a relative in respect of which the right of action was (apart from subsection (5) of this section) lite death of the deceased, any person by whom or on whose behalf the action is brought:

Provided that where, in determining whether the requirements of this paragraph are fulfilled in the case of any such action as aforesaid, it appears to the court that these requirements would be fulfilled if any person had not been included among those by whom or on whose behalf the action is brought, the court shall—

- (i) determine that question as if he had not been so included; but
- (ii) direct that, in so far as the action is brought by or on behalf of that person, subsection (1) of this section shall not operate to displace any defence there mentioned,

and the said subsection (1) shall have effect accordingly.

(5) In relation to an action falling within this section—

- (a) the death of the deceased shall not, and
- (b) any circumstances falling within subsection (6) of this section shall, be regarded for the purposes of this Part of this Act as constituting a right of action.

(6) The circumstances referred to in paragraph (b) of subsection (5) of this section include any circumstances which would have constituted a right of action in relation to an action brought by the deceased before his death in respect of the personal injuries which caused his death.

(7) Subsection (4) of section 18 of this Act shall have effect in relation to an action to which this section applies as it has effect in relation to an action to which that section applies.

## **20 Time-Emit for claiming contribution between wrongdoers**

(1) Where under section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 a person has become or becomes entitled on or after 31st July 1963 to a right to recover from another person a contribution in respect of any damages or expenses, no action to recover a contribution by virtue of that right shall be brought after the

end of the period of two years from the date on which that right accrued to the first-mentioned person.

- (2) Section 17(2) of this Act shall have effect as if any reference therein to subsection (1) of that section included a reference to subsection (1) of this section:

Provided that in relation to any action to which the said section 17(2) applies by virtue of this subsection it shall have effect as if for the words " three years " therein there were substituted the words " two years ".

- (3) The foregoing provisions of this section, and the provisions of section 17(2) of this Act as extended by the last foregoing subsection, shall have effect in relation to an arbitration to recover from a carrier a contribution in respect of damages to which Article 29 in Schedule 1 to the Carriage by Air Act 1961 applies, as they have effect in relation to an action for that purpose.
- (4) For the purposes of this section an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbiter or to agree to the appointment of an arbiter, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

## 21 Transitional provisions

- (1) Subject to subsection (2) of this section and to section 25(3) of this Act, the provisions of this Part of this Act shall have effect in relation to rights of action which accrued before, as well as rights of action which accrue after, the commencement of this Part of this Act:

Provided that the said provisions shall not have effect in relation to rights of action which accrued before 4th June 1954.

- (2) Nothing in section 20 of this Act shall affect any action for a contribution where, before 31st July 1963, decree has been pronounced against the person seeking to obtain the contribution ; and in this subsection " action " includes " arbitration " and " decree " includes " decree-arbitral ".

## 22 Interpretation of Part II and supplementary provisions

- (1) In this Part of this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

" appropriate advice ", in relation to any fact or circumstances, means the advice of competent persons qualified, in their respective spheres, to advise on the medical, legal and other aspects of that fact or those circumstances, as the case may be;

" personal injuries " includes any disease and any impairment of a person's physical or mental condition;

" wrongful " includes negligent.

- (2) For the purposes of this Part of this Act any reference therein to the material facts relating to a right of action is a reference to any one or more of the following, that is to say—

- (a) the fact that personal injuries resulted from a wrongful act or omission;

- (b) the nature or extent of the personal injuries so resulting;
  - (c) the fact that the personal injuries so resulting were attributable to that wrongful act or omission, or the extent to which any of those personal injuries were so attributable.
- (3) For the purposes of this Part of this Act any of the material facts relating to a right of action shall be taken, at any particular time, to have been facts of a decisive character if they were facts which a reasonable person, knowing those facts and having obtained appropriate advice with respect to them would have regarded at that time as determining, in relation to that right of action, that (apart from any defence under section 17(1) of this Act) an action would have a reasonable prospect of succeeding and of resulting in an award of damages sufficient to justify the bringing of the action.
- (4) Subject to the next following subsection, for the purposes of this Part of this Act a fact shall, at any time, be taken to have been outside the knowledge (actual or constructive) of a person if, but only if.—
- (a) he did not then know that fact; and
  - (b) in so far as that fact was capable of being ascertained by him, he had taken all such action (if any) as it was reasonable for him to have taken before that time for the purpose of ascertaining it; and
  - (c) in so far as there existed, and were known to him, circumstances from which, with appropriate advice, that fact might have been ascertained or inferred, he had taken all such action (if any) as it was reasonable for him to have taken before that time for the purpose of obtaining appropriate advice with respect to those circumstances.
- (5) In the application of the last foregoing subsection to a person at a time when he was under a disability and was in the custody of a parent, any reference to that person in paragraph (a), (b) or (c) of that subsection shall be construed as a reference to that parent.
- (6) Notwithstanding anything in any enactment relating to the trial by jury of actions, whether in the Court of Session or the sheriff court, no action relating to a right of action in respect of which the operation of section 17(1) of this Act is precluded by virtue of section 18(1) or 19(1) of this Act shall be tried by jury.

## **23 Amendments and repeals related to Part II**

- (1) The enactments specified in Part II of Schedule 4 to this Act shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Part of this Act.
- (2) The enactments specified in Part II of Schedule 5 to this Act are hereby repealed to the extent specified in column 3 of that Schedule.

## **PART III**

### **SUPPLEMENTAL**

## **24 The Crown**

This Act binds the Crown.

**25 Short title, commencement and extent**

- (1) This Act may be cited as the Prescription and Limitation (Scotland) Act 1973.
- (2) Subject to subsection (3) below, this Act shall come into operation, as follows:—
  - (a) Parts II and III of this Act, Part II of Schedule 4 to this Act and Part II of Schedule 5 to this Act shall come into operation on the date on which this Act is passed;
  - (b) except as aforesaid this Act shall come into operation on the expiration of three years from the said date.
- (3) Nothing in any provision of this Act shall have effect in relation to any proceedings brought before that provision comes into operation.
- (4) This Act extends to Scotland only.

## SCHEDULES

### SCHEDULE 1

Section 6.

#### OBLIGATIONS AFFECTED BY PRESCRIPTIVE PERIODS OF FIVE YEARS UNDER SECTION 6

- 1 Subject to paragraph 2 below, section 6 of this Act applies—
- (a) to any obligation to pay a sum of money due in respect of a particular period—
    - (i) by way of interest;
    - (ii) by way of an instalment of an annuity ;
    - (iii) by way of feuduty or other periodical payment under a feu grant;
    - (iv) by way of ground annual or other periodical payment under a contract of ground annual;
    - (v) by way of rent or other periodical payment under a lease ;
    - (vi) by way of a periodical payment in respect of the occupancy or use of land, not being an obligation falling within any other provision of this sub-paragraph;
    - (vii) by way of a periodical payment under a land obligation, not being an obligation falling within any other provision of this sub-paragraph ;
  - (b) to any obligation based on redress of unjustified enrichment, including without prejudice to that generality any obligation of restitution, repetition or recompense ;
  - (c) to any obligation arising from negotiorum gestio;
  - (d) to any obligation arising from liability (whether arising from any enactment or from any rule of law) to make reparation ;
  - (e) to any obligation under a bill of exchange or a promissory note;
  - (f) to any obligation of accounting, other than accounting for trust funds ;
  - (g) to any obligation arising from, or by reason of any breach of, a contract or promise, not being an obligation falling within any other provision of this paragraph.
- 2 Notwithstanding anything in the foregoing paragraph, section 6 of this Act does not apply—
- (a) to any obligation to recognise or obtemper a decree of court, an arbitration award or an order of a tribunal or authority exercising jurisdiction under any enactment;
  - (b) to any obligation arising from the issue of a bank note;
  - (c) to any obligation constituted or evidenced by a probative writ, not being a cautionary obligation nor being an obligation falling within paragraph 1(a) of this Schedule ;
  - (d) to any obligation under a contract of partnership or of agency, not being an obligation remaining, or becoming, prestable on or after the termination of the relationship between the parties under the contract;

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- (e) except as provided in paragraph 1(c) of this Schedule, to any obligation relating to land (including an obligation to recognise a servitude);
  - (f) to any obligation to satisfy any claim to *terce*, *courtesy*, *legitim*, *jus relictii* or *jus relictiae*, or to any prior right of a surviving spouse under section 8 or 9 of the Succession (Scotland) Act 1964;
  - (g) to any obligation to make reparation in respect of personal injuries within the meaning of Part II of this Act or in respect of the death of any person as a result of such injuries;
  - (h) to any obligation specified in Schedule 3 to this Act as an imprescriptible obligation.
- 3 (1) Subject to sub-paragraph (2) below, where by virtue of a probative writ two or more persons (in this paragraph referred to as "the co-obligants") are bound jointly and severally by an obligation to pay money to another party the obligation shall, as respects the liability of each of the co-obligants, be regarded for the purposes of sub-paragraph (c) of the last foregoing paragraph as if it were a cautionary obligation.
- (2) Nothing in the foregoing sub-paragraph shall affect any such obligation as respects the liability of any of the co-obligants with respect to whom the creditor establishes—
- (a) that that co-obligant is truly a principal debtor, or
  - (b) if that co-obligant is not truly a principal debtor, that the original creditor was not aware of that fact at the time when the writ was delivered to him.
- 4 In this Schedule—
- (a) "land obligation" has the same meaning as it has for the purposes of the Conveyancing and Feudal Reform (Scotland) Act 1970;
  - (b) "probative writ" means a writ which is authenticated by attestation or in any such other manner as, in relation to writs of the particular class in question, may be provided by or under any enactment as having an effect equivalent to attestation.

## SCHEDULE 2

Section 6.

### APPROPRIATE DATES FOR CERTAIN OBLIGATIONS FOR PURPOSES OF SECTION 6

- 1 (1) This paragraph applies to any obligation, not being part of a banking transaction, to pay money in respect of—
- (a) goods supplied on sale or hire, or
  - (b) services rendered,
- in a series of transactions between the same parties (whether under a single contract or under several contracts) and charged on continuing account.
- (2) In the foregoing sub-paragraph—
- (a) any reference to the supply of goods on sale includes a reference to the supply of goods under a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement as defined (in each case) by section 1 of the Hire-Purchase (Scotland) Act 1965 ; and
  - (b) any reference to services rendered does not include the work of keeping the account in question.



- (3) Where there is a series of transactions between a partnership and another party, the series shall be regarded for the purposes of this paragraph as terminated (without prejudice to any other mode of termination) if the partnership or any partner therein becomes bankrupt; but, subject to that, if the partnership (in the further provisions of this sub-paragraph referred to as "the old partnership ") is dissolved and is replaced by a single new partnership having among its partners any person who was a partner in the old partnership, then, for the purposes of this paragraph, the new partnership shall be regarded as if it were identical with the old partnership.
  - (4) The appropriate date in relation to an obligation to which this paragraph applies is the date on which payment for the goods last supplied, or, as the case may be, the services last rendered, became due.
- 2
  - (1) This paragraph applies to any obligation to repay the whole, or any part of, a sum of money lent to, or deposited with, the debtor under a contract of loan or, as the case may be, deposit.
  - (2) The appropriate date in relation to an obligation to which this paragraph applies is—
    - (a) if the contract contains a stipulation which makes provision with respect to the date on or before which repayment of the sum or, as the case may be, the part thereof is to be made, the date on or before which, in terms of that stipulation, the sum or part thereof is to be repaid ; and
    - (b) if the contract contains no such stipulation, but a written demand for repayment of the sum, or, as the case may be, the part thereof, is made by or on behalf of the creditor to the debtor, the date when such demand is made or first made.
- 3
  - (1) This paragraph applies to any obligation under a contract of partnership or of agency, being an obligation remaining, or becoming, prestable on or after the termination of the relationship between the parties under the contract.
  - (2) The appropriate date in relation to an obligation to which this paragraph applies is—
    - (a) if the contract contains a stipulation which makes provision with respect to the date on or before which performance of the obligation is to be due, the date on or before which, in terms of that stipulation, the obligation is to be performed ; and
    - (b) in any other case the date when the said relationship terminated.
- 4
  - (1) This paragraph applies to any obligation—
    - (a) to pay an instalment of a sum of money payable by instalments, or
    - (b) to execute any instalment of work due to be executed by instalments,not being an obligation to which any of the foregoing paragraphs applies.
  - (2) The appropriate date in relation to an obligation to which this paragraph applies is the date on which the last of the instalments is due to be paid or, as the case may be, to be executed.

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### SCHEDULE 3

Sections 7 & 8: Schedule 1.

#### RIGHTS AND OBLIGATIONS WHICH ARE IMPRESCRIPTIBLE FOR THE PURPOSES OF SECTIONS 7 AND 8 AND SCHEDULE 1

The following are imprescriptible rights and obligations for the purposes of sections 7(2) and 8(2) of, and paragraph 2(h) of Schedule 1 to, this Act, namely—

- (a) any real right of ownership in land ;
- (b) the right in land of the lessee under a recorded lease ;
- (c) any right exercisable as a *res merae facultatis* ;
- (d) any right to recover property *extra commercium* ;
- (e) any obligation of a trustee—
  - (i) to produce accounts of the trustee's intromissions with any property of the trust;
  - (ii) to make reparation or restitution in respect of any fraudulent breach of trust to which the trustee was a party or was privy ;
  - (iii) to make furthcoming to any person entitled thereto any trust property, or the proceeds of any such property, in the possession of the trustee, or to make good the value of any such property previously received by the trustee and appropriated to his own use ;
- (f) any obligation of a third party to make furthcoming to any person entitled thereto any trust property received by the third party otherwise than in good faith and in his possession ;
- (g) any right to recover stolen property from the person by whom it was stolen or from any person privy to the stealing thereof ;
- (h) any right to be served as heir to an ancestor or to take any steps necessary for making up or completing title to any interest in land.

### SCHEDULE 4

Sections 16, 23.

#### ENACTMENTS AMENDED

#### PART I

AMENDMENT TAKING EFFECT ON EXPIRATION OF THREE YEARS FROM PASSING OF THIS ACT

#### *The Limitation (Enemies and War Prisoners) Act 1945 (8 & 9 Geo. 6 c. 16)*

In subsection (1) of section 1, as substituted for Scotland by paragraph (a) of section 4, in the list of enactments appended to the subsection, for the entries relating to the Acts of the Parliament of Scotland 1579 cap. 21, 1669 cap. 14 and 1695 cap. 7, and to section 37 of the Bills of Exchange (Scotland) Act 1772, there shall be substituted the words " section 6 of the Prescription and Limitation (Scotland) Act 1973 " .

## PART II

### AMENDMENTS TAKING EFFECT ON PASSING OF THIS ACT

#### *The Limitation (Enemies and War Prisoners) Act 1945 (8 & 9 Geo. 6 c. 16)*

In subsection (1) of section 1, as substituted for Scotland by paragraph (a) of section 4, in the list of enactments appended to the subsection, for the entries relating to section 6 of the Law Reform (Limitation of Actions, etc.) Act 1954 and section 10(1) of the Limitation Act 1963, added by section 11 of the Limitation Act 1963, there shall be substituted the words " sections 17 and 20(1) of the Prescription and Limitation (Scotland) Act 1973 ".

#### *The Carriage by Air Act 1961 (9 & 10 Eliz. 2 c. 27)*

In section 11(c), for the words "section six of the Law Reform (Limitation of Actions, &c.) Act 1954 " there shall be substituted the words " section 17 of the Prescription and Limitation (Scotland) Act 1973 ".

#### *The Law Reform (Miscellaneous Provisions) Act 1971 (1971 c. 43)*

In section 4(2), for the words " section 6 of the Law Reform (Limitation of Actions, &c.) Act 1954 " there shall be substituted the words " section 22(1) of the Prescription and Limitation (Scotland) Act 1973 ".

## SCHEDULE 5

Sections 16, 23.

### REPEALS

#### PART I

#### REPEALS COMING INTO FORCE ON EXPIRATION OF THREE YEARS FROM PASSING OF THIS ACT

Chapter	Short Title	Extent of Repeal
1469 c. 4.	The Prescription Act 1469.	The whole Act.
1474 c. 9.	The Prescription Act 1474.	The whole Act.
1579 c. 19.	The Prescription (Ejections) Act 1579.	The whole Act.
1579 c. 21.	The Prescription Act 1579.	The whole Act.
1594 c. 24.	The Prescription Act 1594.	The whole Act.
1617 c. 12.	The Prescription Act 1617.	The whole Act.
1617 c. 13.	The Reduction Act 1617.	The whole Act.
1669 c. 14.	The Prescription Act 1669.	The whole Act.
1669 c. 15.	The Interruptions Act 1669.	The whole Act.
1685 c. 14.	The Prescription Act 1685.	The whole Act.

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Chapter	Short Title	Extent of Repeal
1695 c. 7.	The Cautioners Act 1695.	The whole Act.
1696 c. 9.	The Prescription Act 1696.	The whole Act.
1696 c. 19.	The Interruptions Act 1696.	The whole Act.
12 Geo. 3. c. 72	The Bills of Exchange (Scotland) Act 1772.	Sections 37, 39, 40.
31 & 32 Vict. c. 64.	The Land Writs Registration (Scotland) Act 1868.	Section 15.
45 & 46 Vict. c. 61.	The Bills of Exchange Act 1882.	In section 100, the words from "this section shall not apply" to the end of the section.
14 & 15 Geo. 5. c. 27.	The Conveyancing (Scotland) Act 1924.	Sections 16,17.
1 & 2 Geo. 6. c. 24.	The Conveyancing Amendment (Scotland) Act 1938.	Section 4.
1969 c. 39.	The Age of Majority (Scotland) Act 1969.	In Schedule 1, the entry relating to the Prescription Act 1617.
1970 c. 35.	The Conveyancing and Feudal Reform (Scotland) Act 1970.	Section 8.

## PART II

### REPEALS COMING INTO FORCE ON PASSING OF THIS ACT

Chapter	Short Title	Extent of Repeal
2 & 3 Eliz. 2. c. 36.	The Law Reform (Limitation of Actions &c.) Act 1954.	Section 6.
1963 c. 47.	The Limitation Act 1963.	Part II.
1971 c. 43.	The Law Reform (Miscellaneous Provisions) Act 1971.	Part I. In Schedule 1, Part II. Schedule 2.