



Prescription and Limitation (Scotland) Act 1973

1973 CHAPTER 52

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,

Status: This is the original version (as it was originally enacted).

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.