



MISCONCEPTIONS IN TIME

negative prescription in damages claims

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WPH Developments v Young & Gault (in liquidation) 2021 SLT 905



Section 6 (1) of the 1973 Act provides:

6. (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...**”



Section 11 sub-sections (1) and (3) of the 1973 Act provide:

(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.**

(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.”



MISCONCEPTION NO. 1

“The WPH appeal was concerned with the question: “what is loss?””

It wasn't.



MISCONCEPTION NO. 2

“The conception of loss in *WPH* etc is a new idea.”

It isn't.



MISCONCEPTION NO. 3

“This all started with *Midlothian* or *Gordon’s Trustees*”

It didn’t.



MISCONCEPTION NO. 4





s. 6 (4) of the 1973 Act

- **Words and conduct by the defender**
- **Inducing an error in mind of the pursuer**
- **Error leads pursuer to refrain from suing for a particular period**



MISCONCEPTION NO. 5

S.6 (4) of the 1973 Act will always save you.

It might not.



MISCONCEPTION NO. 6

The Prescription (Scotland) Act 2018 has come to the rescue.



5. Start point of prescriptive period for obligations to pay damages

(1) Section 11 (obligations to make reparation) of the 1973 Act is amended as follows.

(2) In subsection (1), for “act, neglect or default” substitute “act or omission”.

(3) In subsection (2), for “act, neglect or default”, in each place those words appear substitute “act or omission”.

(4) In subsection (3), for the words “that loss, injury or damage caused as aforesaid had occurred” substitute “of **each of the facts mentioned** in subsection

(5) After subsection (3) insert—

“(3A) The **facts referred** to in subsection (3) are—

1.(a) that loss, injury or damage has occurred,

**2.(b) that the loss, injury or damage was caused by a person’s act or omission,
and**

3.(c) the identity of that person.

(3B) It does not matter for the purposes of subsections (3) and (3A) whether the creditor is aware that the act or omission that caused the loss, injury or damage is actionable in law.”.





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