


24 Aug 89

All Members of the Law Reform Committee

DISCUSSION PAPER OF THE SUB-COMMITTEE  
ON CIVIL LAW AND CIVIL PROCEEDINGS

Please find enclosed a paper and a draft Bill (attachments A and B respectively) tabled for discussion by the Sub-Committee on Civil Law and Civil Proceedings.

  
JEFFREY CHAN WAH TECK  
SECRETARY  
LAW REFORM COMMITTEE

Discussion Paper No.2

Discussion Paper for the Law Reform Sub-Committee on Civil Law and Civil Proceedings on Limitation periods for latent damage

1 Prior to the decision of the English House of Lords in Pirelli General Cable Works v Oscar Faber and Partners [1983] 2 A.C. 1, it was generally thought that a cause of action would accrue only when the damage was discoverable: English Court of Appeal decision in Sparham Souter v Town and Country Developments (Essex) Ltd. 1976 QB 858, approved in Anns v Merton London Borough Council 1978 AC 728. In Pirelli however, their Lordships felt constrained to follow Cartledge v E. Jobling 1963 AC 758 (a personal injuries case which decided that 'a cause of action accrues as soon as a wrongful act has caused personal injury beyond what can be regarded as negligible, even when that injury is unknown to and cannot be discovered by the sufferer'). The consequences of this decision are grave in cases of latent damage (ie where the damage does not manifest itself until some time after the damage occurs) as the action will accrue when the damage occurs whether or not that damage is known or could reasonably have been known by the plaintiff. Since under the existing law the limitation period runs from the time the action accrued, there is a real likelihood that a plaintiff's right of action in cases of latent damage may be time-barred before the plaintiff knew or could have known about the damage.

2 The House of Lords was aware of the difficulty created by its judgment and recommended that legislation be passed to overcome the undesirable effects of its judgment. In England, amendments as regards personal injuries cases had already been made in 1975 (now s.11 of the UK Limitation Act 1980). The UK Latent Damage Act 1986 (LDA1986) was passed to alleviate problems relating to other negligence cases. The New Zealand Law Commission has recently published its report recommending similar legislative amendments (Report No.6, Oct 1988, Limitation Defences in Civil Proceedings).

3 It is likely that Singapore courts will find themselves constrained to apply the principles laid down in Pirelli.

4 The proposed Bill seeks to amend the Limitation Act (Cap 163) based upon the provisions of the UK Latent Damage Act 1986 (LDA1986) and the UK Limitation Act 1980 (LA1980) s.11. An attempt has been made to simplify, where possible, the English provisions.

5 The new limitation period for personal injuries cases is three years from the starting date or the date of knowledge of the damage, whichever is later. (s.24A(2))

6 The new limitation period for non-personal injuries cases is six years from the starting date or three years from the date of knowledge of the damage, whichever is the later. (s.24A(3))

7 The "starting date" is defined in s.24A(7) to mean (to simplify) the date of the breach in respect of which the action is brought. The adoption of this date instead of "the date of accrual of the action" is intended to avoid the difficulties faced in determining when damage occurred. The date of accrual may differ according to the cause of action relied upon (even though the actions are based upon the same facts). In the case of latent damage, the date when damage occurred (ie date of accrual) will often have to be decided by reliance upon expert evidence.

8 The distinction between the limitation periods for personal injury cases and non-personal injury cases is justifiable since the distinction has existed for a long time under the existing law.

9 The new limitation periods in the draft Bill apply to actions for negligence, nuisance and breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision). This differs from the LDA1986 which applies only to negligence actions, but is consistent with the personal injuries provisions in the LA1980 s.11. There is some controversy whether 'negligence' in the English LDA 1986 includes claims based on contract as well as tort. The English Law Reform Commission seems to have restricted itself only to a consideration of tortious actions.

10 The abovementioned limitation periods are subject to an overriding time limit of 15 years, also from the starting date, after which no action can be commenced notwithstanding that the action may still not have accrued. (s.24B). The fixing of this period is ultimately a matter of judgment as to the balancing of the interests of plaintiffs and potential defendants. The English Law Reform Commission decided on a period of 15 years after taking into account that it is 12 years under the European Community Product Liability Directives and 20 years under a certain Scottish product liability provisions. (Law Reform Commission Twenty-fourth Report para.4.13)

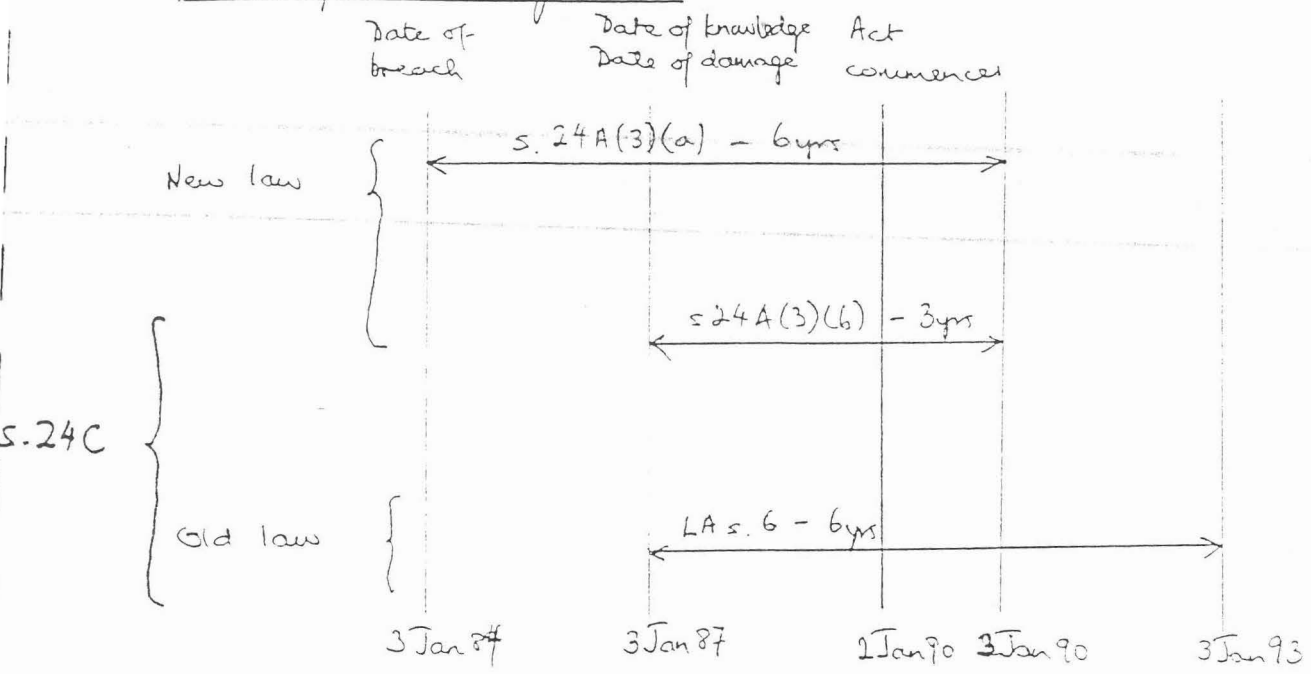
11 It may be argued that 15 years is too long in actions other than those relating to the construction of buildings. Further the limitation period in actions relating to land is only 12 years. Nevertheless the overriding period would come into play only in exceptional cases since the primary limitation periods in s.24A(2) and (3) would most probably expire before that period was reached. It would probably not impose a much greater burden of record-keeping on potential litigants since the burden is already fairly onerous under the existing law and the availability of microfilming etc has eased the load.

- 12 The definition of knowledge in s.24A(4) to (6) follows closely the English provisions. There have been a fair number of cases considering the English provisions. A recent case Davis v City and Hackney Health Authority Times 27 Jan 89 interprets "knowledge" in s.14(3) of the LA1980 to mean what "a man of the plaintiff's age, with his background, his intelligence, and his disabilities" would reasonably have known.
- 13 The transitional provisions are in s.24C. It will apply to causes of action accruing before and after the Act comes into force. However, the Act will not apply to actions which are already barred under the existing law or which have already been commenced before the coming into force of the Act.
- 14 It is realised that in non-personal injury cases there is a real possibility that the limitation period under the existing law would have expired later than under the new law. This can be seen in the the example at Annex 1. S.24C(2) is intended to ensure that certain plaintiffs will not be disadvantaged by the enactment of the new Act. It preserves the running of the limitation period from the date of accrual, whilst at the same time giving the benefit of the extension from date of knowledge.

15 A complete review of the Limitation Act is not proposed at present, so as not to delay the introduction of these much-needed provisions to overcome shortcomings in the law relating to limitation periods in cases of latent damage.

subcom2.wpl

Non-personal injuries



Note: Date of knowledge may be later, but not earlier, than date of damage.

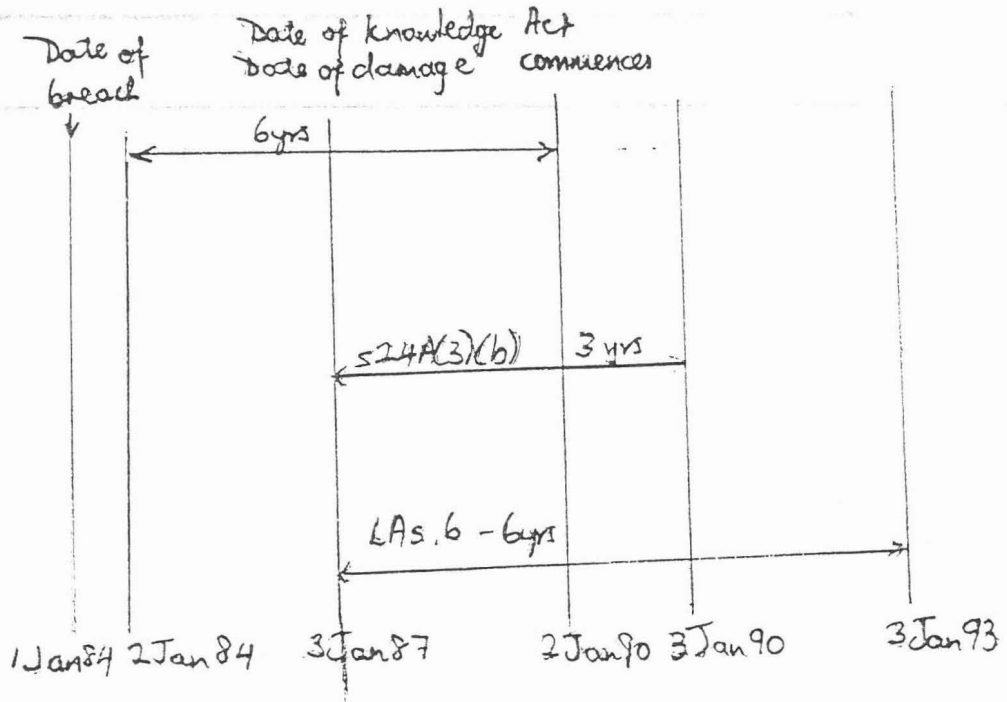


- 1 The wording of the draft Bill applies the new limitation periods to actions based on contract as well as tort. It would be difficult in practice to draw a distinction between tort and contract claims. Also a controversy remains as to whether concurrent tortious and contractual liability should exist : Tai Hing Cotton Mill Ltd. v Liu Chong Hing Bank Ltd. 1985 2AER 947 where Lord Scarman said in the Privy Council -  
"Their Lordships do not believe that there is anything to the advantage of the law's development in search for a liability in tort where the parties are in a contractual relationship". On the other hand the introduction a three year extension from date of knowledge may make record-keeping an even more onerous task in contract cases.
  
- 2 S.24C(2) is limited in its operation to actions where the date of accrual of the action is less than six years before the date of commencement of the Act. There is a possibility that plaintiffs may still be disadvantaged by the new Act in some cases of latent damage even though the breach occurred more than six years before the date of commencement. (See example in Annex B) Nevertheless the cut-off date in s.24C(3) may be justified in the interest of reducing uncertainty and in view of the fact that only a negligible number of cases, if any, will probably be affected.
  
- 3 If however it is the view that there should be no possibility of anyone being disadvantaged by the new Act, the following provision may be substituted as s.24C(2)-

" If the action accrued before the commencement of this Act, section 24A(3) shall have effect as if for the words "starting date" there were substituted the words "date on which the action accrued".

Non-personal injury case

Annex 3



## A BILL

## i n t i t u l e d

An Act to amend the Limitation Act (Chapter 163 of the 1985 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement.

1. This Act may be cited as the Limitation (Amendment) Act 1989 and shall come into operation on such date as the Minister may, by notification in the Gazette, appoint.

Amendment of section 6.

2. Section 6 of the Limitation Act is amended by deleting subsections (4) and (5) and renumbering the existing subsections (6), (7) and (8) as subsections (4), (5) and (6) respectively.

Amendment of section 24.

3. Section 24(1) of the Limitation Act is amended -

(a) by deleting the words "section 6(4)"

in paragraph (b) and substituting the words "section 24A(2)"; and

(b) by deleting the words "section 6(6)"

in paragraph (c) and substituting the words "section 6(4)".

New sections 24A, 24B and 24C.

4. The Limitation Act is amended by inserting, immediately after section 24, the following sections:

"Time limits for negligence, nuisance and breach of duty actions in respect of latent injuries and damage.

24A-(1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).

(2) An action to which this section applies where the damages claimed consist of or include damages in respect of personal injuries to the plaintiff or any other person shall not be brought after the expiration of -

(a) three years from the starting date ; or

(b) three years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (a).

(3) An action to which this section applies, other than one referred to in subsection (2), shall not be brought after the expiration of the period of either -

(a) six years from the starting date; or

(b) three years from the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (a).

(4) In subsections (2) and (3), the knowledge required for bringing an action for damages in respect of the relevant injury or damage (as the case may be) means knowledge -

(a) that the injury or damage was

attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;

(b) of the identity of the defendant;

(c) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant; and

(d) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(5) Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant for the purposes of subsections (2) and (3).

(6) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire -

- (a) from facts observable or ascertainable by him ; or
- (b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek,

but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

(7) For the purposes of this section and sections 24B and 24C, "starting date" means the date (or, if more than one, from the last of the dates) on which there occurred any act or omission -

(a) which is alleged to constitute negligence, nuisance or breach of duty; and

(b) to which the injury or damage in respect of which damages are claimed is alleged to be attributable (in whole or in part).

Overriding time limit for negligence, nuisance and breach of duty actions involving latent injuries and damage.

24B.-(1) An action for damages for negligence, nuisance or breach of duty to which section 24A applies shall not be brought after the expiration of fifteen years from the starting date.

(2) This section bars the right of action in a case to which subsection (1) applies notwithstanding that the cause of action has not yet accrued before the end of the period of limitation prescribed by this



Transitional provisions relating to section 24A.

section.

24C.-(1) Nothing in section 24A shall -

- (a) enable any action to be brought which was barred by this Act immediately before the commencement of the Limitation (Amendment) Act 1989; or
- (b) affect any action commenced before this Act comes into force.

(2) If the starting date is less than six years before the date of commencement of this Act, section 24A(3) shall have effect as if for the words "starting date" there were substituted the words "date on which the action accrued".

(3) Subject to subsections (1) and (2), sections 24A and 24B shall have effect in relation to causes of action accruing before, as well as after, this Act comes into force."

EXPLANATORY STATEMENT.

This Bill seeks to make changes to the law relating to limitation of actions as it affects actions for negligence, nuisance and breach of duty.

Clause 1 relates to the short title and commencement.

Clauses 2 and 3 contain amendments consequential upon the amendments in clause 4.

Clause 4 introduces new sections 24A, 24B and 24C in the Limitation Act.

Cap.163.

The new section 24A(2) provides that no action shall be brought in actions for negligence, nuisance or breach of duty where damages are claimed for personal injuries after the expiration of three years from the starting date or the date of knowledge of the damage, whichever is the later.

The new section 24A(3) provides that in other actions for negligence, nuisance or breach of duty, no action shall be brought after the expiration of six years from the starting date or three years from the date of knowledge, whichever is the later.

The new section 24A(4) to (6) defines the meaning of knowledge for the purposes of clauses 24A(2) and (3).

The new section 24A(7) defines the meaning of the starting date for the purposes of sections 24A,

24B and 24C.

The new section 24B provides for an overriding time limit of fifteen years from the starting date for actions to which section 24A applies.

The new section 24C contains transitional provisions.

EXPENDITURE OF PUBLIC MONEY.

This Bill will not involve the Government in any extra financial expenditure.

/limit.b-(v.a.)