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TIME-LIMITS AND LIMITATIONS (PRESCRIPTION) IN
THE FIELD OF INTERNATIONAL SALE OF GOODS

Note by the Secretary-General

Addendum

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INTRODUCTION

In his note A/CN.9/16 the Secretary-General reproduced the text of studies received from Governments on "time-limits and limitations (prescription) in the field of international sale of goods". The present addendum reproduces an addendum submitted by the United Kingdom to its study reproduced in document A/CN.9/16.

STUDIES SUBMITTED BY GOVERNMENTS

UNITED KINGDOM

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3 February 1969

Limitation and Prescription in relation to the International Sale of Goods in Scots Law

- A. Private International Law. A distinction is made in Scots law between the obligation and the remedy. Whatever relates to the nature of the obligation is governed by the proper law of the contract and whatever relates to the remedy, for example, an action to compel performance or an action for breach of contract, is governed by the lex fori.

If a foreign prescription is pleaded in an action raised in a Scottish court, the court will determine the proper law of the contract and will then apply a foreign prescription which affects the substance of the contract, but will have no regard to a foreign prescription which affects procedure, but will apply Scottish prescriptions affecting procedure.

- B. Domestic Law. The rules of prescription are statutory and prescription is of two kinds - (1) extinctive and (2) procedural.

- (1) Extinctive. The negative prescription which extinguishes obligations was established by Acts of the Scottish Parliament, namely the Prescription Act 1469 (c.4), the Prescription Act 1474 (c.9) and the Prescription Act 1617 (c.12). The period of this prescription was reduced from forty years to twenty years by section 17 of the Conveyancing (Scotland) Act 1924 (c.27) as amended by section 4 of the Conveyancing (Scotland) Act 1938 (c.24).

The effect of this prescription is to extinguish rights which have not been put into force, so that when the prescription period expires, the right ceases. The right is therefore of no effect even if the debtor then admits he has never paid or, as the case may be, delivered the goods. The

period starts from the date when the claim becomes enforceable. It should be noted that in a recent case it was held that the negative prescription should be applied by Scottish courts even if the proper law was not Scots. The negative prescription should therefore be regarded as both substantive and procedural.

(2) Procedural. (So far as affecting contracts of sale of goods.)

(i) Triennial prescription. This was established by the Prescription Act 1579 (c.21), and it applies to shopkeepers' accounts but not to mercantile transactions in general; that it applies between the retailer and customer but not between the retailer and dealer. It is doubtful if it applies to the sale of a single article, and it does not apply to debts founded on a written obligation.

It runs from the date of the last item in an account and the effect of the expiry of three year period is to limit the method of proving the debt to the writ or oath of the debtor and shifts on to the creditor the onus of proof that the debt is still owing.

The triennial prescription is the most important in so far as contracts of sale of goods are concerned.

(ii) There are other prescriptive periods, namely,

(a) Quinquennial prescription. This was established by the Prescription Act 1669 (c.14) and the period reduced to three years by the Personal Diligence Act 1838 (c.114). This prescription affects bargains concerning moveables provable by witnesses, but does not apply to claims founded on a written obligation. It does apply to the sale of a single article.

(b) Sexennial prescription. This was established by the Bills of Exchange Act 1772 (c.72) which provides that all bills of exchange and promissory notes, except bank notes, prescribe in six years. Cheques are also included.

(c) Vicennial prescription. This prescription was established by the Prescription Act 1669 (c.14) and applies to manuscript letters and bonds and subscriptions in account books made without witnesses.

(d) As noted in paragraph (1) above the extinctive prescription established by the statutes there mentioned is being treated as being also procedural.

The effect of the above prescriptions is similar to that of the triennial in that the onus of proof shifts on to the creditor and the method of proving the debt is limited to the writ or oath of the debtor.

Interruptions

It should be noted that in all the above cases the periods of prescription can be interrupted by judicial process. The effect of interruption is that the prescriptive period starts anew from the date of the interruption.

The negative prescription can also be interrupted by extra-judicial interruption, for example, payment of interest on the debt or written acknowledgement of the debt by the debtor.

C. Other time limits.

(1) Arbitration. In general, if the contract submitting any matter to an arbiter for his decision contains no time limit the arbiter's jurisdiction remains operative for twenty years; that is, the negative prescription applies. But if a reference to arbitration is embodied-in a contract relating to other matters and that contract falls the general rule is that the reference to arbitration will fall with the contract unless there is some term in the contract saving the arbitration.

(2) Reasonable time. In cases of breach of contract, certain remedies require to be exercised during a reasonable time. These remedies are rescission of the contract and rejection of goods. 'A reasonable time' is a question of fact in each case.