

**A Study on the Commencement of the Extinctive Prescription
of a Claim for the Injury Arising from a Wrongful Act:
Analysis of the China Petrochemical Development Corporation
Pollution Case and the RCA Pollution Case**

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Abstract

According to Paragraph 1, Article 197 of the Civil Code, the commencement of the extinctive prescription of a claim for the injury arising from a wrongful act adopts doubled judging standard. Sentence 1 of Paragraph 1, Article 197 of the Civil Code is the first standard, as starting the short extinctive prescription when the injury and the person bound to make compensation became known to the injured person. The purpose of this regulation is to protect the interests of the creditor. As for whether the claimant is aware of the injury, whether the injury caused by one or more infringements, the judgement should be based on the foreseeability theory. However, to start the short extinctive prescription, not only does the claimant have to know both the injury and the person bound to make compensation, but Paragraph 1, Article 197 of the Civil Code should also be applied by analogy. That is, the claimant needs to have actual knowledge to other constitutive elements of tort liability. Sentence 2 of Paragraph 1, Article 197 of the Civil Code is the second standard to decide the commencement of the long extinctive prescription. According to the objective standard, the starting of the long extinctive prescription is from the moment when the wrongful act was committed. The purpose of this regulation is to protect the principle of legal stability and interests of the debtor. As to the wrongful act committed, neither the moment when the damage happened nor the ban promulgated by the

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Environmental Protection Administration to prohibit from acting is the definition, to wit, starting of the long extinctive prescription is from the date when tort was committed. However, if the debtor's defense of extinctive prescription is abuse of right, even though the creditor's right to claim damages is extinguished by prescription, the court should reject the defense of the debtor, and the creditor can exercise claim in the reasonable period of time to interrupt the extinctive prescription.

Keywords: tort liability, extinctive prescription, doubled judging standard, good faith principle, China Petrochemical Development Corporation Pollution Case, RCA Pollution Case