

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 34

Court of Appeal / Civil Appeal No 47 of 2025

Between

Kuvera Properties Pte Ltd

... Appellant

And

Far East Opus Pte Ltd

... Respondent

In the matter of Originating Claim No 366 of 2024

Between

Kuvera Properties Pte Ltd

... Claimant

And

Far East Opus Pte Ltd

... Defendant

JUDGMENT

[Limitation of actions — Particular causes of action — Claim for damages under s 2(1) of the Misrepresentation Act 1967 — Section 6(1) Limitation Act 1959]

[Limitation of Actions — Particular causes of action — Claim for equitable rescission of contract — Section 6(7) Limitation Act 1959]
[Limitation of Actions — Postponement of limitation period — Whether claim for relief for misrepresentation constituting claim for relief from the consequences of a mistake — Section 29(1)(c) Limitation Act 1959]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND FACTS	3
DECISION BELOW	6
THE BROAD SCOPE OF THIS APPEAL	10
AN OVERVIEW OF THE LAW OF LIMITATION.....	11
THE SPECIFIC ISSUES IN THIS APPEAL.....	13
THE CAUSES OF ACTION ADVANCED BY THE APPELLANT.....	13
RESCISSION OF THE SPA	15
DAMAGES UNDER S 2(1) OF THE MA.....	15
DAMAGES IN LIEU OF RESCISSION UNDER S 2(2) OF THE MA.....	17
<i>Section 2(2) of the MA does not create a cause of action.....</i>	<i>17</i>
<i>Does the operation of s 2(2) of the MA require a continuing right to rescission?</i>	<i>20</i>
THE APPLICABLE LIMITATION PERIODS TO THE APPELLANT’S CAUSES OF ACTION.....	26
DAMAGES UNDER S 2(1) OF THE MA.....	27
<i>An action founded on tort.....</i>	<i>32</i>
<i>An action to recover a sum recoverable under written law</i>	<i>36</i>
RESCISSION OF THE SPA	37
<i>An overview of the law of rescission</i>	<i>37</i>
<i>The treatment of equitable remedies under the LA</i>	<i>39</i>
(1) The text of s 6(7) of the LA	41

(2) The purpose of s 6(7) of the LA.....	47
(A) <i>The historical approach of the courts of equity to limitation</i>	48
(B) <i>The codification of the historical practice</i>	55
(C) <i>The position in Singapore</i>	57
(3) Summary and conclusion	62
THE TIME WHEN LIMITATION BEGAN TO RUN AGAINST THE APPELLANT	67
WHETHER S 29(1)(C) OF THE LA APPLIES TO THE APPELLANT’S CLAIM UNDER S 2(1) OF THE MA.....	70
<i>A claim for relief from a misrepresentation is an action for “relief from the consequences of a mistake”</i>	70
<i>The relationship between ss 6(1), 24A and 29(1) of the LA</i>	80
WHETHER THE APPELLANT’S CLAIM IS TIME-BARRED ON THE FACTS	87
CONCLUSION.....	88

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Kuvera Properties Pte Ltd

v

Far East Opus Pte Ltd

[2026] SGCA 34

Court of Appeal — Civil Appeal No 47 of 2025

Sundaresh Menon CJ, Steven Chong JCA, Ang Cheng Hock JCA, Hri Kumar Nair JCA and Kannan Ramesh JAD

11 May 2026

17 July 2026

Judgment reserved.

Steven Chong JCA (delivering the judgment of the court):

Introduction

1 In *Abdulla v Birmingham City Council* [2012] ICR 1419, Lord Sumption JSC observed that while “issues of limitation are bedevilled by an unarticulated tendency to treat it as an unmeritorious procedural technicality”, such criticism is not justified because “[limitation] is not a technicality, nor is it necessarily unmeritorious” (at [41]). The legitimacy of this observation is aptly illustrated by the dispute in this somewhat unusual and exceptional case. Even though limitation periods have been known to the law for over four centuries since the Limitation Act 1623 (c 16) (UK) (“LA 1623 (UK)”), the present case, the facts of which are in no way themselves unusual or exceptional, *is* unusual or exceptional in that the key issues that have arisen for determination appear to have come before the court for the first time, either in this jurisdiction or, more

broadly, in any other jurisdiction with comparable legislation that has the LA 1623 (UK) as a lineal ancestor.

2 The sentiment that Lord Sumption JSC referred to was undoubtedly encouraged by the beguiling complexity of the law of limitation. The Limitation Act 1959 (2020 Rev Ed) (“LA”) in this jurisdiction is not a particularly complex statute in length or structure. It contains no more than 35 sections which are spread out over four Parts. But, as our analysis of the various issues arising in this case will demonstrate, there can be no mistake that the law of limitation can be of elusive complexity and it can pose traps and pitfalls for unwary litigants. But the adequacy of the law of limitation as it currently stands, and whether a different approach is warranted, is, as we have previously observed, not an issue for the courts but for Parliament to address and resolve: see *Esben Finance Ltd v Wong Hou-Lianq Neil* [2022] 1 SLR 136 (“*Esben Finance*”) at [84], [85] and [123]. The court’s role is to interpret and apply the LA and its provisions as they stand, doing its best to clarify, explain, and perhaps provide a map that assists litigants and lawyers with navigating the maze that is the law of limitation.

3 In this case, the appellant, Kuvera Properties Pte Ltd, alleges that it was induced by misrepresentations made by the respondent, Far East Opus Pte Ltd, to enter into a contract to acquire a unit in a medical complex developed by the respondent. In terms of relief, the appellant seeks damages under s 2 of the Misrepresentation Act 1967 (2020 Rev Ed) (“MA”) and rescission of the contract. The respondent contends that the appellant is out of time and its claims should be struck out on limitation grounds. In the court below, a Senior Judge (“Judge”) agreed with the respondent. The appellant now appeals to this court.

4 As mentioned above, this appeal raises an array of issues that have not received much, if any, consideration by this court or by the courts of other

jurisdictions. These include the applicable limitation periods (if any) under the LA to the causes of action which the appellant has advanced and, to the extent that they are subject to the LA, whether any provisions in the LA operate to postpone the running of time or extend the relevant limitation periods. It will be seen that the answers to these questions are far from straightforward and require a proper appreciation of not only the nature of the causes of action advanced but also the historical development of the law of limitation. Before turning to our substantive analysis, however, we begin with an outline of the factual context of this appeal.

Background facts

5 The appellant first learnt on 29 January 2013 through an article in the Business Times that the respondent was to launch a development known as SBF Center (“Development”). The article stated, among other things, that: (a) part of the Development would be occupied by a medical centre; and (b) there were to be 48 medical units for sale in the Development.

6 As the appellant was interested in purchasing a medical unit, one of its representatives visited the respondent’s showroom sometime in March 2013 and met with the respondent’s sales agents to obtain more information about the Development.

7 At this meeting, the respondent’s agents confirmed that the Development would include a medical centre and further explained that: (a) the medical centre would be the only medical centre in the financial district; (b) the medical units in the centre were designated as an approved medical unit; and (c) the corporate group which the respondent was part of, Far East Organisation, had a stellar reputation as a developer and had past experience developing

medical centres. The respondent's sales agents also made a number of oral representations to the appellant about the Development, including that:

- (a) the 48 medical units in the Development would form a fully operational medical centre providing different and specialist medical services;
- (b) the medical centre was capable of functioning as such as the appropriate authorisation had been obtained from the authorities;
- (c) the medical centre was designed to accommodate state-of-the-art medical equipment; and
- (d) the medical centre and each unit within it would have an adequate electrical supply.

The respondent's agents also handed a brochure and marketing materials for the Development to the appellant's representative, which stated, among other things, that the medical centre in the Development provided "well designed" and "purpose built" medical suites in a dedicated facility.

8 The appellant alleges that, in reliance on the aforesaid representations about the Development (contained in the Business Times article, made orally to its representative by the respondent's agents, and also stated in the brochure and marketing materials) (collectively, "Representations"), it decided to purchase a medical unit in the Development ("Medical Unit"), which it did by executing a Sale and Purchase Agreement dated 8 April 2013 ("SPA").

9 The appellant received the keys to the Medical Unit sometime in August 2016. From then, it attempted to procure a tenant for the Medical Unit but was

generally unsuccessful in doing so. The Medical Unit thus remained unoccupied until March 2021, when a tenant was finally secured.

10 In the meantime, the appellant and other owners of medical units in the Development raised concerns to the respondent over perceived deficiencies in the medical units. Specifically, at a meeting held on 21 May 2018, the owners (including the appellant) expressed concerns over their difficulties in attracting tenants and sought answers from the respondent as to whether the medical centre in the Development was really capable of functioning as such as the respondent had previously represented (“21 May 2018 Meeting”). Some of the problems which were highlighted included: (a) the lack of suitable lifts in the Development for transporting equipment to the medical units; (b) the Development being unsuited for transporting wheelchair-bound patients or patients who were carried on stretchers; (c) the lack of access points for ambulances and other emergency response services; (d) the inability to transport magnetic resonance imaging (“MRI”) machines to the medical units due to difficulties in access; and (e) the medical units being unsuited for the operation of MRI machines.

11 The appellant claims that, despite being confronted with the difficulties that the owners of the medical units were facing, the respondent maintained at the 21 May 2018 Meeting that the Representations were true. In the light of the assurances given by the respondent, the appellant left the 21 May 2018 Meeting continuing to believe that the Representations were true.

12 According to the appellant, it was only after “a reasonable period” had passed following the 21 May 2018 Meeting that it formed the view that the Representations might have been untrue. In the event, the appellant’s suspicions were only confirmed on 22 November 2022 when it received an expert report

that was commissioned to examine the Development and opine on whether the Representations were true.

13 Subsequently, on 16 May 2024, the appellant commenced the present proceedings against the respondent in HC/OC 366/2024 (“OC 366”), seeking damages under s 2 of the MA and rescission of the SPA on the basis that it had been induced by the Representations to purchase the Medical Unit and that the Representations were false.

Decision below

14 Before even filing its Defence in OC 366, the respondent applied to have OC 366 struck out on the primary ground that the appellant’s claims were time-barred. At first instance, an assistant registrar declined to strike out OC 366 as she was not convinced that it was clear beyond argument that the appellant’s claims were time-barred. However, the respondent was successful in its appeal to the Judge against the assistant registrar’s decision: see *Far East Opus Pte Ltd v Kuvera Properties Pte Ltd* [2025] SGHC 109 (“Judgment”). The appeal before us is against the Judge’s decision in striking out OC 366.

15 Before we outline the Judge’s key conclusions, we make an important preliminary observation about his and the parties’ approach below that we will elaborate on later. It appears that the Judge did not undertake a comprehensive identification of the causes of action which the appellant had advanced. To be fair to the Judge, this step appears to have been skipped by the parties as well. The result of this, however, is that the parties and the Judge apparently proceeded on the basis that the appellant had only brought *two* causes of action in OC 366, namely, a claim for damages under s 2(1) of the MA and a claim for damages in lieu of rescission under s 2(2) of the MA. This, as we demonstrate

below at [29]–[50], was a mischaracterisation of the actual position, and it has unfortunately created at least two difficulties in this appeal:

(a) First, in proceeding as they did, the parties and the Judge overlooked that, apart from its claims for damages under s 2 of the MA, the appellant had also advanced a *separate* cause of action for rescission of the SPA. Thus, neither the parties nor the Judge considered (at least not in detail) the question of what, if any, limitation period was applicable to the appellant’s claim for rescission in contrast with a claim for damages in lieu of rescission under s 2(2) of the MA. As a result, the Judge only dealt with rescission incidentally as part of his analysis of whether the appellant’s claim under s 2(2) of the MA was time-barred: Judgment at [128]. As a consequence of this omission, the separate claim for rescission, and its nature as a claim for equitable relief, eluded consideration altogether. Indeed, our impression that this was overlooked below is confirmed by the parties’ reaction of surprise when this court first surfaced the issue of the appellant’s claim for rescission to the parties at an early stage of this appeal.

(b) Second, another consequence of the omission to properly crystallise the appellant’s causes of action is that it was unnecessary for the Judge to have considered if the appellant’s claim for damages in lieu of rescission under s 2(2) of the MA was time-barred. As we will explain, we consider that s 2(2) of the MA does not create a cause of action to begin with, and it is therefore not subject to any limitation period under the LA.

16 The Judge began by holding that claims under ss 2(1) and 2(2) of the MA constituted actions “founded on a contract” within the meaning of s 6(1)(a)

of the LA as “actions under both provisions are premised on the existence of [a] contract”. As a result, the appellant’s claims under ss 2(1) and 2(2) of the MA would in principle be subject to the six-year time bar under s 6(1) of the LA: Judgment at [83]. The Judge considered, however, that to the extent that s 24A(3) of the LA was also applicable to the appellant’s claims, it would displace the operation of s 6(1)(a) of the LA, based on his reading of an earlier decision of this court, but this was of no consequence as ss 6(1)(a) and 24A(3)(a) both prescribed the same limitation period of six years: Judgment at [85]. On the facts, as it was agreed between the parties that the appellant’s cause of action accrued in August 2016 (*ie*, when it received the keys to the Medical Unit), this meant that the appellant’s claims would be time-barred under either ss 6(1)(a) or 24A(3)(a) of the LA unless ss 24A(3)(b) or 29(1)(c) of the LA, which the appellant had relied on, operated to postpone or extend the limitation period such that the appellant was in time when OC 366 was filed on 16 May 2024: Judgment at [84].

17 The Judge thus turned to consider the applicability of s 29(1)(c) of the LA, which provision *postpones* the commencement of the limitation period for an action “for relief from the consequences of a mistake” to the time when the claimant discovered or could with reasonable diligence have discovered the mistake. In this regard, the Judge held that claims under ss 2(1) and 2(2) of the MA did not fall within the scope of s 29(1)(c) of the LA as: (a) a claim would only be a claim “for relief from the consequences of a mistake” under s 29(1)(c) if the mistake was “an essential ingredient of the cause of action”; and (b) in his view, mistake was “not a prerequisite for relief under s 2 of the MA”: Judgment at [100] and [102].

18 Having found that s 29(1)(c) of the LA did not apply, the Judge then went on to consider if s 24A(3)(b) of the LA was applicable. After considering

the provision and the authorities, the Judge held that s 24A(3)(b) of the LA (which serves to *extend* the limitation period by a further three years from the date of the claimant's obtaining of the knowledge required for bringing the action for damages and a right to bring the action) was applicable to the appellant's claim under s 2(1) of the MA but not the appellant's claim under s 2(2) of the MA. This distinction was drawn on the basis that only actions for damages for "breach of duty" fell within the scope of s 24A(3) of the LA, and in the Judge's view, only s 2(1) of the MA imposed on the defendant a statutory duty not to make a misrepresentation: Judgment at [121]–[124]. This meant that the appellant's claim under s 2(2) of the MA was time-barred as of August 2022 pursuant to ss 6(1)(a) or s 24A(3)(a) of the LA as s 24A(3)(b) of the LA could not operate to extend the limitation period.

19 Separately, the Judge also considered that no claim for damages in lieu of rescission under s 2(2) of the MA was available to the appellant as the appellant's claim for rescission was time-barred. The Judge appears to have assumed that the same limitation period applicable to the appellant's claims under s 2 of the MA – *ie*, s 6(1)(a) of the LA – also applied to the appellant's claim for rescission: Judgment at [128]. As we explain below, the point may not have been as straightforward as the Judge considered it to be. But, proceeding on this basis, the Judge held that, where the action for rescission was itself time-barred, no claim for damages under s 2(2) of the MA would lie as s 2(2) could only operate if the claim for rescission remained available: Judgment at [129]–[137].

20 Finally, despite holding that s 24A(3)(b) of the LA was applicable to the appellant's claim under s 2(1) of the MA, the Judge found that it did not save the appellant's claim under s 2(1) from being time-barred as he considered that the appellant had the requisite knowledge for time to begin running under

s 24A(3)(b) before 16 May 2021 (three years before the date when OC 366 was filed): Judgment at [143]–[146]. Specifically, the Judge found that it was clear that the appellant had sufficient knowledge, or could reasonably have acquired sufficient knowledge, of the material deficiencies of the Medical Unit to commence proceedings as of the 21 May 2018 Meeting: Judgment at [149]–[156]. The three-year extension afforded by s 24A(3)(b) of the LA would thus have expired by 21 May 2021 (three years from the 21 May 2018 Meeting). The claim under s 2(1) of the MA was therefore time-barred. The Judge did mention, however, that if he had been convinced that s 29(1)(c) of the LA was applicable, he would have reached a different conclusion and not struck out any of the appellant’s claims. This was because it was not clear based on the pleadings alone that the appellant either did discover or could with reasonable diligence have discovered that the Representations were false as of 16 May 2018 – *ie*, six years before the filing of OC 366 – as the appellant might not have obtained this knowledge as of the 21 May 2018 Meeting so as to trigger the running of time under s 29(1)(c) of the LA before that date: Judgment at [148].

The broad scope of this appeal

21 In this appeal, the appellant submits that the Judge erred in concluding that all of its causes of action in OC 366 were time-barred. In overview, the appellant argues that either its causes of action fall outside the scope of the LA and are not subject to any limitation period or, to the extent that they are so subject, OC 366 was brought in time as either ss 24A(3)(b) or 29(1)(c) of the LA operated to (respectively) *extend* the limitation period or *postpone* the commencement of the limitation period. In contrast, the respondent seeks to uphold the Judge’s conclusions. The crux of the respondent’s case is that all of the appellant’s causes of action are subject to a six-year limitation period under

the LA, and time began to run from August 2016, such that the appellant was out of time when it brought OC 366 more than seven years later.

An overview of the law of limitation

22 Limitation periods are statutorily prescribed time limits within which a cause of action may be enforced by a claimant through the judicial process: see, for example, *Pacmar Shipping Pte Ltd v South of England Protection and Indemnity Association (Bermuda) Ltd* [2026] 1 SLR 537 (“*Pacmar*”) at [1]. The judicial process offers the claimant the opportunity to convert an underlying cause of action into a court judgment. This is reflected in the doctrine of merger in that when a court gives judgment to a claimant on a cause of action, “the cause of action is changed into a matter of record, which is of a higher nature, and the inferior remedy is merged in the higher”: *King v Hoare* (1844) 13 M & W 494 at 504; *Zavarco plc v Nasir* [2025] AC 738 at [17]–[24]. The effect of the expiry of a limitation period is thus strictly not the *substantive* extinction of the cause of action – in the same way that a cause of action ceases to exist when it merges into a judgment – but the *procedural* bar against having recourse to the judicial process for its enforcement; as it is sometimes said, limitation bars the remedy and not the right: *Pacmar* at [2].

23 A corollary of the procedural nature of limitation periods is that they do not operate automatically but must be specifically pleaded: s 4 of the LA. Thus, even if the claim is strictly time-barred, limitation would not operate as a bar unless the defendant has raised it: *Chuan & Company Pte Ltd v Ong Soon Huat* [2003] 2 SLR(R) 205 at [35]. But, once the defence of limitation is pleaded, the burden of proof is on the claimant to establish that his claim is not time-barred: *IPP Financial Advisers Pte Ltd v Saimee bin Jumaat* [2020] 2 SLR 272 (“*IPP Financial Advisers*”) at [36]–[41].

24 However, once a limitation defence is pleaded, the analysis tends to play out the same way in that it raises the same issues in a relatively set sequence. Although the ultimate question is whether the claimant's cause of action is time-barred, the court must run through a number of intermediary steps to equip itself with the information necessary for answering that question. In broad terms, these are: (a) the identity and number of the causes of action advanced by the claimant; (b) the limitation periods under the LA which are applicable to those causes of action (if any); and (c) the time when the applicable limitation periods began to run on the facts.

25 Given this, in our view, when a court is faced with a claim that the claimant's action has been commenced out of time due to the operation of a limitation period, the court should adopt a systematic approach that considers the following issues in order:

- (a) First, the court should identify the cause(s) of action which the claimant has advanced.
- (b) Second, the court should identify the applicable limitation period(s) (if any) for the cause(s) of action that the claimant has advanced.
- (c) Third, the court should consider when the limitation period(s) started to run against the claimant for the cause(s) of action advanced.
- (d) Fourth, the court should determine whether the claimant had commenced its action for its cause(s) of action within the limitation period(s).

The specific issues in this appeal

26 Approaching this appeal through the framework above, the issues arising for our consideration can be recast as follows:

- (a) First, what are the causes of action that the appellant has advanced in OC 366?
- (b) Second, what are the limitation periods that are applicable (if any) to the appellant’s causes of action?
- (c) Third, when did the applicable limitation periods for each of the appellant’s causes of action begin to run?
- (d) Fourth, having regard to the length of the limitation periods and the time when they started to run, are the appellant’s causes of action time-barred?

27 These issues raise a number of difficult points on the nature of the appellant’s causes of action and the scope of the LA. Given their novelty and complexity, we appointed Professor Steven Elliott KC (“Professor Elliott”) and Mr Huang Jiahui (“Mr Huang”) as independent counsel and young independent counsel to assist the court (collectively, “ICs”). We will elaborate on the parties’ and the ICs’ submissions in the course of working through the four issues above.

The causes of action advanced by the appellant

28 The starting point for any question of limitation is the identification of the *cause(s) of action* which the claimant is advancing. Indeed, over a century ago, Lord Esher MR said in *Soar v Ashwell* [1893] 2 QB 390 that “[i]n order to determine whether a Statute of Limitations applies or not to a cause of action before the Court, the Court must first determine what is the cause of action relied

on” (at 393). Although the concept of a “cause of action” has been defined in a variety of ways, it broadly refers to the essential facts that establish the claimant’s right to the remedy he seeks: *Multistar Holdings Ltd v Geocon Piling & Engineering Pte Ltd* [2016] 2 SLR 1 at [34].

29 In this appeal, it appears to be common ground between the parties and the ICs that the appellant has advanced two causes of action in OC 366, namely, a claim for damages under s 2(1) of the MA and a claim for rescission of the SPA. Although the appellant had initially suggested that it also had a *third* cause of action – a claim for damages in lieu of rescission under s 2(2) of the MA – it conceded before the hearing, in its further submissions responding to the ICs’ opinion, that s 2(2) “does not create a new cause of action”. However, the appellant disagrees with the Judge’s analysis that, if an underlying claim for rescission is time-barred (or subject to any bar to rescission), it would no longer be possible for the court to award damages in lieu of rescission under s 2(2).

30 The classification of the appellant’s causes of action before us seems to depart from that of the Judge below. As noted earlier at [15], while the Judge also appeared to consider that the appellant had advanced two causes of action, he identified these as a claim for damages under s 2(1) of the MA and a claim for damages in lieu of rescission under s 2(2) of the MA, and no separate consideration was given to the appellant’s claim for rescission: Judgment at [25(c)]. Nevertheless, we agree with the parties and the ICs that the appellant has pleaded two causes of action in OC 366, being: (a) a claim for damages under s 2(1) of the MA; and (b) a claim for rescission of the SPA.

Rescission of the SPA

31 What distinguishes the appellant’s claim for damages under s 2(1) of the MA as a different cause of action from its claim for rescission of the SPA is that *loss* is an essential ingredient of the former but not the latter. In a case where *A* and *B* have entered into a contract, *A* will have a right to rescind – in equity (which distinction between equity and common law we elaborate on at [77] below) – if the following conditions are met: (a) a representation has been made to *A*; (b) the representation was made by, or with the knowledge of, *B*; (c) the representation was false; and (d) *A* relied on the representation: Dominic O’Sullivan, Steven Elliott & Rafal Zakrzewski, *The Law of Rescission* (Oxford University Press, 3rd Ed, 2023) (“*The Law of Rescission*”) at para 4.02. Although *A*’s right to rescind can be defeated by certain bars to rescission, these are *defences* to *A*’s cause of action and do not form part of the cause of action themselves. Put a different way, *A* does not have to disprove the possible application of any bars to rescission before he is entitled to rescind; instead, the burden of pleading and proving the operation of a bar to rescission, such as affirmation of the contract, lies on *B* if he wishes to defeat *A*’s right to rescind: *The Law of Rescission* at paras 23.110–23.111.

32 The existence of loss is not part of the cause of action for rescission. This makes sense because, unlike a claim for damages, the purpose of rescission is to achieve restitution rather than compensation for loss that *A* has suffered from entering into the contract: *The Law of Rescission* at para 2.09.

Damages under s 2(1) of the MA

33 In contrast, loss is a necessary element of a claim for damages under s 2(1) of the MA given that the remedy seeks to compensate *A* for the loss

caused by his entry into a contract under inducement of a misrepresentation. Indeed, this is clear from the language of s 2(1) itself:

Damages for misrepresentation

2.—(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto *and as a result thereof he has suffered loss*, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

[emphasis added]

34 The elements of the cause of action under s 2(1) of the MA are thus the same as those which constitute the right to rescind a contract in equity, save for the additional requirement of loss. Or, seen from a different perspective, the ingredients of a right to damages under s 2(1) of the MA are the same as those of the tort of deceit, save that the fault element of dishonesty that defines deceit is dispensed with under s 2(1). This is clear from the so-called “fiction of fraud” which s 2(1) utilises – it imposes liability for a misrepresentation *as if* it were made fraudulently, notwithstanding that it was not. It is well-established, in this regard, that a claim for damages for deceit requires proof of loss because the tort of deceit is not actionable *per se*. But, for present purposes, the important point is that the additional requirement of loss means that the facts which complete a claim under s 2(1) are different from those of rescission and the two are therefore separate causes of action.

35 For completeness, while s 2(1) of the MA has a defence of reasonable belief built into it, that does not form part of the cause of action created by the section. In the same way that the bars to rescission are defences to claims for rescission, the structure of s 2(1) is that a right to damages arises upon the

making of an actionable misrepresentation and proof of loss, subject to the defendant defeating that right if he establishes that he had reasonably believed in the truth of the representation: *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 (“*RBC Properties*”) at [66].

Damages in lieu of rescission under s 2(2) of the MA

Section 2(2) of the MA does not create a cause of action

36 Section 2(2) of the MA, however, is a different thing altogether. In our judgment, it is strictly not a cause of action. Instead, it is a *discretionary power given to the court* by statute to substitute the remedy that the claimant would otherwise be entitled to – rescission – with another remedy. A claimant thus does not, strictly speaking, have a cause of action under s 2(2). Instead, the cause of action is for rescission, albeit the court may modify the remedy by awarding damages in lieu of rescission pursuant to s 2(2).

37 In this regard, we note that the Judge was of the view that s 2(2) of the MA does create a cause of action when he stated that s 2(2) “furnishes the representee with the *option* of *claiming* damages in lieu of rescission” [emphasis added]: Judgment at [74]. In our view, that may not be accurate as s 2(2), strictly speaking, does not give the claimant an election between rescission or damages. It is telling that the language of s 2(2) does not speak in terms of an *entitlement* of the claimant to damages, or the defendant being subject to a correlative duty or liability to pay damages, but focuses on the perspective of the *court*:

Damages for misrepresentation

2.—(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, *that person shall be so liable*

notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

(2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed, in any proceedings arising out of the contract, that the contract ought to be or has been rescinded, *the court or arbitrator may declare the contract subsisting and award damages in lieu of rescission*, if of opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.

[emphasis added]

38 A few observations may be made about the language of ss 2(1) and 2(2) of the MA:

(a) First, as just mentioned, the way in which ss 2(1) and 2(2) are drafted is markedly different. Section 2(1) states that the representor “shall be so liable” to pay damages to the representee. Section 2(2), however, speaks in terms of the court awarding damages in lieu of rescission. This distinction is also reflected in s 2(3) of the MA, which regulates the relationship between ss 2(1) and 2(2) and avoids potential double recovery by requiring the court to take into account any damages awarded under s 2(2) when assessing damages under s 2(1), as s 2(3) speaks of a person being “liable to damages under subsection (1)” on the one hand while it refers to damages being “awarded against a person under subsection (2)” on the other.

(b) Second, as a corollary to the first point, while s 2(1) refers to the claimant having a right to damages, s 2(2) refers to the claimant having a right to *rescission* (“... and he would be entitled, by reason of the

misrepresentation, to rescind the contract”). This makes clear, in our view, that s 2(2) does not give a claimant a cause of action for, or a right to, damages in the same way as s 2(1).

(c) Third, following from the second point, s 2(2) contemplates that the claimant would make a claim for rescission (“if it is claimed ... that the contract ought to be or has been rescinded”), upon which the court “may declare the contract subsisting and award damages in lieu of rescission”. This indicates that, in so far as s 2(2) of the MA refers to the claimant having a cause of action, that cause of action is for *rescission*, rather than damages. And, as we explain in greater detail at [40]–[50] below, the fact that an award of damages under s 2(2) is “in lieu of rescission” means that it is in substitution for, and thus conditioned on the existence of, a cause of action for rescission.

39 These points make plain that s 2(2) of the MA does not, and was not intended to, create a cause of action in the same way as s 2(1) of the MA. It appears that, in forming the contrary view, the Judge was influenced by a remark in this court’s decision in *RBC Properties* that s 2(2) “furnishes the representee with the *additional option of claiming damages in lieu of rescission*” on top of the equitable remedy for rescission that would always be available for every type of misrepresentation [emphasis in original] (at [67]). This may suggest, at first blush, that s 2(2) creates a cause of action that can found a “claim” for damages. But, as the ICs correctly point out, what this court was referring to was that a claimant “who takes a realistic view” can “alongside their claim for rescission, invite the court to exercise the s 2(2) MA power”, and “[i]t is in this *practical rather than technical sense* that damages under s 2(2) MA can be said to be an option available to the representee” [emphasis added]. The ICs’ reading in fact ties in with our observation in *RBC Properties* that it is not strictly

necessary for a claimant to *plead* a claim under s 2(2) as it is a discretion vested in the court rather than a claim for damages *per se* (at [130]):

Whilst the Respondent *did not* include an alternative claim for damages in lieu of rescission under s 2(2), this would not *per se* be a bar to such relief because the remedy of damages in lieu of rescission is, on the plain words of the section, an exercise of the court's discretion that turns on whether the court is "of opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party". ... [emphasis in original]

Indeed, in the subsequent decision of the High Court in *Tiong Swee Eng v Yeo Khee Siang* [2015] 3 SLR 1141, Judith Prakash J (as she then was) considered that it was open to the court to exercise its discretion under s 2(2) even though neither party had made submissions on it (at [74]).

Does the operation of s 2(2) of the MA require a continuing right to rescission?

40 This leads us to a different point. At the hearing, the appellant sought to impress upon us that the court could award damages in lieu of rescission under s 2(2) of the MA even if the right to rescission was no longer available (see [28] above). In this regard, the appellant took issue with the Judge's reasoning that, if its claim for rescission of the SPA was not available for one reason or another, s 2(2) would not operate. The reason for the non-availability of rescission that the Judge focused on was that the claim for rescission was time-barred under the LA (see [19] above). Although we assess the correctness of this premise (*ie*, a claim for rescission is subject to a limitation period) separately at [78]–[120] below, rescission may be unavailable for other reasons (such as a bar to rescission), and we consider here, more generally, whether s 2(2) is contingent on the continued availability of a claim for rescission as was found by the Judge.

41 In our judgment, the appellant’s submission on the scope of s 2(2) of the MA is incorrect. We agree with the Judge that the continued availability of a claim for rescission is a condition precedent to the court’s power under s 2(2). Thus, if a bar to rescission has set in, there would no longer be room for s 2(2) to apply. There is no merit in the appellant’s submission that s 2(2) should be construed as “enlarging the courts’ discretionary remedial power in equity with a view to achieving fuller justice” such that damages may be awarded even though no claim for rescission remains available.

42 For one, the appellant’s submission conflicts with the plain wording of s 2(2) of the MA. It is difficult to see how damages can be said to be awarded “in lieu of” rescission if a claim for rescission is no longer available when the court is considering whether to award damages: Hugh Beale, “Points on Misrepresentation” (1995) 111 LQR 385 at 388; Steven Elliott, “The Power to Avoid Disproportionate Relief” in *Issues in the Law of Rescission* (Jordan English & Jonas Atmaz Al-Sibaie eds) (Oxford University Press, 2026) (“*Power to Avoid Disproportionate Relief*”) at p 195; *Salt v Stratstone Specialist Ltd* [2015] 2 CLC 269 at [17]. And looking beyond this to other parts of s 2(2), the impression is only confirmed further. As Judge Raymond Jack QC pointed out in *Government of Zanzibar v British Aerospace (Lancaster House) Ltd* [2000] 1 WLR 2333, the reference at the tail-end of s 2(2) to the court weighing certain factors, including “the loss that would be caused ... if the contract were upheld” and “the loss that rescission would cause to the other party”, “supposes that rescission is an option open to the court” (at 2342A–B).

43 Next, we agree with the view advanced by Professor Elliott in a recent essay – which the ICs’ submissions before us drew upon – that the purpose of s 2(2) of the MA is to give the court a discretion to avoid granting rescission if it considers that the consequences of rescission would be disproportionate:

Power to Avoid Disproportionate Relief at p 184. It seeks to avoid forcing the court to grant relief which is disproportionate, albeit in a way which minimises prejudice to the aggrieved party, by allowing the court the option of awarding damages as a next-best alternative rather than denying any remedy outright: *Power to Avoid Disproportionate Relief* at p 186. It follows that, if rescission is no longer available, the risk of disproportionality that s 2(2) targets does not arise: *Power to Avoid Disproportionate Relief* at p 187.

44 In the face of these points, the appellant urged us to prefer the contrary view of Jacob J in *Thomas Witter Ltd v TBP Industries Ltd* [1996] 2 All ER 573 (“*Thomas Witter*”), who adopted a broader perspective and considered it sufficient if, *at some point in time*, the claimant had a right to rescission even if it had since been lost (at 590j–591a):

... the power to award damages under s 2(2) does not depend upon an extant right to rescission—it only depends upon a right having existed in the past. Whether it depends upon such a right existing at any time, or depends upon such a right subsisting at the time when the representee first claims rescission, I do not have to decide. ... In principle, however, I would have thought that it is enough that at any time a right to rescind subsisted. It is damages in lieu of that right (even if barred by later events or lapse of time) which can be awarded.

We disagree with this analysis. In our view, the provision speaks plainly of a need for the court to be faced with a choice between rescission and damages and, in turn, the possibility of rescission being disproportionate.

45 The appellant’s submission and the court’s view in *Thomas Witter* that a power to award damages should be available even where rescission is no longer available appears to be built on an assumption that it would be unfair for the claimant to be left without a remedy if the right to rescission should become barred. This is of particular concern where wholly innocent misrepresentations

are concerned, as once the claimant's right to rescission becomes barred, the claimant would have no remedy as damages would not be available under the common law torts of deceit and negligent misrepresentation or s 2(1) of the MA. It is for this reason that the appellant says that s 2(2) of the MA should be interpreted to allow the court to award damages even in such circumstances. To clarify, we use the phrase "wholly innocent misrepresentation" to refer to cases where the misrepresentation is made *without any fault* on the part of the defendant. Although s 2(1) creates a right to damages without proof of negligence or dishonesty (and is in that sense a remedy for innocent misrepresentation), that right is defeasible upon proof of the defendant having reasonably believed in the truth of the representation. This means that, in substance, a successful action under s 2(1) is akin to (but not necessarily co-extensive with) negligence: *RBC Properties* at [65], [66] and [68]. Thus, while s 2(1) creates a right to damages based on *innocent* misrepresentation, it *does* entail some element of fault, albeit one that is framed in negative terms as a defence rather than as part of the cause of action, and is therefore distinguishable from *wholly innocent* misrepresentation.

46 As a starting point, the appellant faces an uphill battle in establishing that s 2(2) of the MA was intended to give the court a power to award damages for wholly innocent misrepresentation that is untethered from a subsisting right to rescission as the law has never awarded damages for wholly innocent misrepresentation since it considers it "a misfortune rather than a wrong in any real sense": *Power to Avoid Disproportionate Relief* at p 195. Historically, damages were only available for the tort of deceit: *Redgrave v Hurd* (1881) 20 Ch D 1 at 12. Despite the subsequent extension of liability for misrepresentation through the establishment of the common law tort of negligent misrepresentation in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964]

AC 465 (“*Hedley Byrne*”) and the statutory right to damages for innocent misrepresentation under s 2(1) of the MA, it remains the position that liability to pay damages requires *some* element of fault, as we have just explained. And although rescission is available as a remedy for all misrepresentations, including wholly innocent misrepresentation, it serves a restitutionary rather than a compensatory purpose, and is thus consistent with the view that wholly innocent misrepresentation is not a wrong for which the defendant should be liable to pay compensation to the claimant. Against this backdrop, what the appellant must show is that s 2(2) of the MA was intended to depart from this paradigm.

47 The appellant cannot possibly discharge that burden because there exists positive evidence to the contrary in the form of the UK Law Reform Committee, *Tenth Report: Innocent Misrepresentation* (Cmnd 1782, 1962), which report’s recommendations led to the enactment of the Misrepresentation Act 1967 (c 7) (UK) (“MA (UK)”), the English parent legislation of the MA. At the hearing, Professor Elliott highlighted that the Law Reform Committee had in fact acknowledged that wholly innocent misrepresentation had not historically given rise to a right to damages and expressly confirmed that it was not intending to change this (at para 17):

It has been suggested to us that a person who has entered into a contract in reliance on a representation which has proved to be false should be able to bring an action for damages independently of any right he may have to rescind the contract. ... We agree that the present law does not provide an adequate remedy but ***we do not think it would be right to give every victim of an innocent misrepresentation the right to claim damages***, as The Law Society has suggested. *If neither party has culpably misled the other, there is everything to be said for holding the parties to their bargain when the deal can no longer be undone. In such a case the loss should rest where it falls.* On the other hand, we think that where one of the parties was at fault in making the representation, the other ought to be entitled to damages as of right. We also think that the onus should be on the representor to satisfy the court that he was not at fault. He will normally be in a better position to know the

true facts than the other party. [emphasis added in italics and bold italics]

48 This passage reveals the thinking behind ss 2(1) and 2(2) of the MA. Two important points emerge from it. First, the Committee stated that it was not intending to create a right to damages for every innocent misrepresentation. This puts paid to the appellant’s interpretation of s 2(2) – and that adopted by the court in *Thomas Witter* – as giving the court the power to award damages so long as a right to rescission existed at some point, because this is really a roundabout way of saying that a right to damages should exist for innocent misrepresentation as rescission is a remedy available for *all* misrepresentations. Clearly, the MA was not intended to create a universal claim for damages in the same way as a claim for rescission is available for all misrepresentations.

49 Second, the Committee’s statement that “where one of the parties was at fault in making the representation, the other ought to be entitled to damages as of right” and its subsequent comment that the burden of proving fault should be reversed were clearly references to what became s 2(1) of the MA. What is noteworthy, however, is that, consistent with what we have said at [45] above, the Committee did not think that s 2(1) was a departure from the existing view that a claim for damages should only arise if the claimant was *at fault* (save that the fault element was to be implemented as a defence). Indeed, if s 2(2) were truly as broad as the appellant asserts, in that it creates a freestanding claim to damages for every misrepresentation, s 2(1) would be otiose and redundant.

50 In the round, we are satisfied that there is no basis for the appellant’s claim that the court may award damages under s 2(2) of the MA even if rescission is no longer available.

The applicable limitation periods to the appellant’s causes of action

51 After the court has identified the cause(s) of action that are in issue, it should then consider the applicable limitation periods for each cause of action. This depends on a proper characterisation of the cause of action in the scheme of the LA. In this regard, two general points, which are of relevance to the two causes of action the appellant has advanced, are worth highlighting.

52 First, the classifications used in the LA are pitched at the highest degree of abstraction as it would be unrealistic to expect Parliament to make specific limitation provision for every conceivable cause of action. Thus, for example, while there are different types of torts, s 6(1)(a) of the LA uses the general classification of “actions founded on tort”. What this means is that the court would have to adopt a broader view of the cause of action in question, focusing in particular on whether it falls within a wider genus recognised in the LA since the LA may not make specific reference to the cause of action itself.

53 Second, while Parliament has adopted a broader approach, this does not mean that the court should assume that a limitation period *must* apply to every cause of action. This court’s decision in *Esben Finance* is a case in point. In that case, we held that claims for unjust enrichment were not subject to any limitation period under the LA, departing from the English courts’ approach of characterising such claims as claims “founded on a contract” under the English equivalent to s 6(1)(a) of the LA. In reaching this conclusion, we expressly rejected any assumption that Parliament could not have intended that certain causes of action would not be subject to a limitation period (see *Esben Finance* at [84]):

... it should be noted that statutory limitation periods are emphatically as well as quintessentially creatures of statute, and it is not the function of the courts to act as “mini-

legislatures” by reading into the [LA] a statutory limitation period for a claim which the Legislature did not intend to impose. The [LA] does not, understandably, contain any “sweeping-up” or “catch-all” provision imposing a general limitation period for all other claims not *expressly specified* in the Act itself. This suggests that the Legislature did not intend *all* claims to be subject to a limitation period but only those which it deemed *ought* to have been so limited (namely, the claims expressly specified in the Act). It follows that claims which could not have been within the contemplation of the Legislature at the time the [LA] and its predecessor legislation were enacted could *not* have been intended by the Legislature to be subject to statutory limitations under the respective statutes (in particular, the [LA]). [emphasis in original]

In the light of this, the mere fact that a given cause of action may appear to be unaccounted for under the LA is not itself a reason for rejecting an interpretation that would lead to such a result or preferring an interpretation that would avoid such a result. Put another way, the analysis does not start from the premise that one must find an applicable limitation period and then reason backwards to rationalise that conclusion.

Damages under s 2(1) of the MA

54 We begin with the appellant’s claim for damages under s 2(1) of the MA. To recap, the Judge held that this claim was an “action founded on a contract” under s 6(1)(a) of the LA and thus subject to a six-year limitation period under s 6(1): Judgment at [83]. However, relying on an earlier decision of this court that we consider below, the Judge considered that s 6(1)(a) of the LA was displaced by s 24A(3) of the LA as a claim under s 2(1) of the MA was an action for damages for “breach of duty”: Judgment at [122] and [124].

55 The appellant submits that the Judge erred in his analysis. Before us, counsel for the appellant, Mr Rezza Gaznavi (“Mr Gaznavi”), submitted that no limitation period is applicable to a claim under s 2(1) of the MA as s 2(1) is “*sui*

generis". In this connection, Mr Gaznavi emphasised that, as a matter of timing, because the progenitor of the MA, the MA (UK), was only enacted in 1967, a claim under s 2(1) could not have been in Parliament's contemplation when the LA was first enacted in 1959.

56 The respondent and the ICs submit that the Judge was correct in his conclusion but differ in their respective reasons. The respondent agrees with the Judge that a claim under s 2(1) of the MA is an "action for damages for ... breach of duty" under s 24A(3) of the LA or, in the alternative, an action "founded on a contract" under s 6(1)(a) of the LA. On the other hand, the ICs submit that the Judge was correct in settling on s 24A(3) of the LA as the provision applicable to the appellant's claim under s 2(1) of the MA, but they disagree that such claims are "founded on a contract" under s 6(1)(a) of the LA. Instead, the ICs consider the better fit for claims under s 2(1) of the MA to be the "tort" limb of s 6(1)(a) of the LA (*ie*, an action "founded on tort"). However, this makes no practical difference as, regardless of whether a claim under s 2(1) of the MA is given a contractual or tortious characterisation, s 6(1)(a) of the LA would apply, and it would be in turn displaced by s 24A(3) for the reasons given by the Judge. For completeness, the ICs add that, to the extent that s 24A of the LA does not apply, a claim under s 2(1) of the MA, being a cause of action created by statute, could also be an action "to recover any sum recoverable by virtue of any written law" under s 6(1)(d) of the LA.

57 It is useful to first set out all of the provisions which have been referred to by the parties before we begin our analysis:

Limitation of actions of contract and tort and certain other actions

6.—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:

(a) actions founded on a contract or on tort;

...

(d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or sum by way of penalty or forfeiture.

...

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

24A.—(1) This section shall apply 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).

...

(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 —

(a) 6 years from the date on which the cause of action accrued; or

(b) 3 years from the earliest date on which the claimant 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).

58 Drawing together the different threads of the Judge’s analysis and the parties’ positions before us, the overarching question of how claims under s 2(1) of the MA are treated (if at all) under the LA can be broken down into three parts:

(a) First, is a claim under s 2(1) of the MA subject to a limitation period under the LA at all?

(b) Second, if so, is a claim under s 2(1) of the MA an action “founded on a contract” (s 6(1)(a) of the LA), “founded on tort”

(s 6(1)(a) of the LA) or “to recover any sum recoverable by virtue of any written law” (s 6(1)(d) of the LA)?

(c) Third, what is the relationship between ss 6(1) and 24A of the LA, and in what circumstances, or to what extent, does the latter displace the former?

59 We propose to state our conclusions up front, along with some brief opening observations, before elaborating on them. We take the first and second questions together as they are intertwined. We think they are straightforward. It is clear, in our judgment, that a claim under s 2(1) of the MA is subject to a limitation period under s 6(1)(a) of the LA. We reject the appellant’s suggestion that no limitation period applies. Next, as between the two possible options under s 6(1)(a) of the LA, we agree with the ICs that a claim under s 2(1) of the MA should be classified as an action “founded on tort”, and we disagree with the Judge and the respondent’s preference for the contractual limb of s 6(1)(a). For completeness, we also agree with the ICs’ alternative suggestion that, other than s 6(1)(a), a claim under s 2(1) of the MA would also be an action to recover a sum recoverable by virtue of a written law under s 6(1)(d) of the LA.

60 What is more difficult, however, is the third question, which concerns the relationship between ss 6(1)(a) and 24A of the LA. This is a consequential point in this case as the appellant has invoked both ss 24A(3)(b) and 29(1)(c) of the LA to, respectively, *extend* the limitation period or *postpone* the commencement of the limitation period, and the application of each provision may lead to different results. This disparity exists because, while s 24A(3)(b) of the LA provides for a limitation period of *three* years from the date on which the appellant had the knowledge required for bringing an action for damages and a right to bring such an action, s 29(1)(c) of the LA does not itself prescribe

a limitation period of any set duration, but provides that a limitation period applicable to the cause of action only begins to run from the time when the appellant either did or could with reasonable diligence have discovered the mistake. The effect of s 29(1)(c), taken together with our view that a claim under s 2(1) of the MA falls within the scope of s 6(1), is that the appellant would have *six years* from the relevant time stated in s 29(1)(c). The consequence is that, if time is assumed to have begun running at the same time under both provisions, s 29(1)(c) would, all else being equal, be more generous to the appellant than s 24A(3)(b) since the former, if read together with s 6(1), would allow the appellant *six years* from that time whereas the latter would only give three years. Indeed, this was precisely what the Judge found in this case: while he found that the appellant's claim was time-barred under s 24A(3)(b), the Judge observed in passing that, if he had held that s 29(1)(c) was applicable, he would have come to the opposite conclusion that the appellant's claims were not time-barred (see [20] above).

61 Given this, the relationship between ss 6(1) and 24A of the LA bears on the relationship between ss 24A and 29(1)(c) of the LA. It is clear that s 6(1) is displaced by s 24A *to some extent* because s 5 of the LA provides that the provisions in Part 2 “shall have effect subject to the provisions of Part 3”, and s 24A is contained in Part 3 whereas s 6(1) is contained in Part 2. It has thus been held in earlier decisions of this court (which the Judge relied on) that where a cause of action falls within both ss 6(1)(a) and 24A, it is s 24A that would apply: *Lian Kok Hong v Ow Wah Foong* [2008] 4 SLR(R) 165 at [14]; *IPP Financial Advisers* at [44]. But in none of those cases was it suggested that a different provision in Part 3 of the LA other than s 24A – such as s 29(1)(c) in this case – could also be applicable. In such a case, s 5 sheds little light because it only regulates the relationship between Part 2 and Part 3 and not between

different provisions within Part 3 itself. The issue is therefore not simply whether s 24A displaces s 6(1)(a) but *the extent to which it does so*. More specifically, the question is whether s 24A *completely* displaces s 6(1)(a) such that, if s 24A is capable of applying to a cause of action, it is a complete code on limitation for that cause of action, and it is no longer possible for the claimant to return to s 6(1)(a) and to use it as a gateway to s 29(1)(c) if that would produce a more favourable result than s 24A.

62 We consider the relationship between ss 6(1), 24A and 29(1)(c) of the LA at [157]–[167] below. But to state our conclusion here, we are of the view that s 24A does *not* completely displace s 6(1) such that it remains possible, if a claimant wishes, to rely on s 6(1) read with another provision in Part 3 if that produces a more favourable outcome than s 24A(3)(b). Nevertheless, at this juncture, we focus on the first and second questions at [58] above, and our view that a claim under s 2(1) of the MA is an action “founded on tort” under s 6(1)(a) of the LA or an action to recover a sum due under written law under s 6(1)(d) of the LA. The former conclusion is a necessary precursor to our subsequent analysis on s 24A in so far as it is established that a claim for damages that is “founded on tort” under s 6(1)(a) would also be a claim for damages for “breach of duty” under s 24A as the latter provision encompasses all torts and breaches of contract: *Yan Jun v Attorney-General* [2015] 1 SLR 752 at [62].

An action founded on tort

63 We do not think that there is any real argument against the view that a claim under s 2(1) of the MA is an action “founded on tort” under s 6(1)(a) of the LA.

64 What the Judge and the respondent focus on is that a claim under s 2(1) of the MA can only be brought by *A* against *B* if *A* and *B* are parties to a contract. This is made clear by the opening words of s 2(1), which read “[w]here a person has entered into a contract after a misrepresentation has been made to him by another party ...”. The Judge and the respondent draw from this the conclusion that a claim under s 2(1) is an action “founded on a contract” under s 6(1)(a) of the LA: Judgment at [78].

65 With respect, it is one thing to say that a prerequisite for a claim under s 2(1) of the MA is that the claimant must have entered into a contract with the defendant, but quite another to say that the claim itself is “founded on a contract”. The natural meaning of the phrase “founded on a contract” is that the claimant is *relying on the contract* as the source of the right asserted against the defendant. Consistent with this, the ICs have submitted, rightly in our view, that an action “founded on a contract” would refer to a claim to enforce a primary obligation under the contract or a secondary obligation to pay damages upon breach of a primary obligation: *Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827 at 848–849. In our view, to interpret the phrase “founded on a contract” as capable of including a claim under s 2(1) of the MA, which focuses on wrongful *pre-contractual* conduct, and which often carries a tacit assertion that the claimant *would not have entered into the contract* if not for the defendant’s wrong, would be to give it a meaning it cannot possibly bear.

66 It is well-established that s 2(1) of the MA is a statutory extension of the tort of deceit. This much is clear from the language of s 2(1) which, as we have noted at [34] above, imposes liability for innocent misrepresentation by analogy to the tort of deceit (*ie*, fraudulent misrepresentation). The effect of s 2(1), therefore, was to alter the reliefs available for non-fraudulent misrepresentations

by creating a right to damages when such a right had hitherto only been available for deceit: *RBC Properties* at [64].

67 Given that the tort of deceit is the primogenitor of s 2(1) of the MA, it stands to reason that a claim under s 2(1) would fall into the same category as a claim for deceit and in turn be a claim “founded on tort” within the meaning of s 6(1)(a) of the LA. A different way of looking at s 2(1), albeit one that leads to the same conclusion, is to see it as a “*statutory analogue* of the *common law* action for *negligent* misrepresentation” established in *Hedley Byrne* [emphasis in original]: *RBC Properties* at [83]; *CDX v CDZ* [2021] 5 SLR 405 (“*CDX*”) at [41]. Either way, the inescapable conclusion is that a claim under s 2(1) is an action “founded on tort”. Mr Gaznavi’s bald assertion that liability under s 2(1) is “*sui generis*” and thus subject to no limitation period cuts no ice because it either fails to appreciate, or seeks to dissociate s 2(1) from, its roots in the tort of deceit and its substantive similarity to negligent misrepresentation.

68 While the Judge ostensibly preferred to treat a claim under s 2(1) of the MA as an “action founded on a contract” so far as s 6(1)(a) of the LA was concerned, he also accepted that s 2(1) created a “statutory tort” in justifying his view that it fell within the scope of s 24A(1) of the LA as an action for damages for “breach of duty”: Judgment at [120]–[121]. It would thus seem that the Judge’s intuition also pointed towards treating a claim under s 2(1) as a tort action, even if he preferred to treat it as a contractual action in the first instance. But, apart from this, we are also fortified in our conclusion by numerous decisions of the English courts, both within and outside the context of limitation, which have similarly referred to s 2(1) of the MA (UK) as a “statutory tort” or as imposing tortious liability: see, in the context of limitation, *Laws v Society of Lloyd’s* [2003] EWCA Civ 1887 at [92]; *Green v Eadie* [2012] Ch 363 (“*Green*”) at [34]–[36]; and, outside of the limitation context, *Howard Marine*

and Dredging Co Ltd v A Ogden & Sons (Excavations) Ltd [1978] QB 574 at 595G; *First Tower Trustees Ltd v CDS (Superstores International) Ltd* [2019] 1 WLR 637 at [98].

69 We do not accept Mr Gaznavi’s submission that it is not possible for a claim under s 2(1) of the MA to be within the scope of the LA because the latter was enacted before the former. We accept that a claim under s 2(1) specifically would not have been in Parliament’s specific contemplation when the LA was enacted. But this, with respect, is too microscopic a perspective. As explained at [52] above, the LA is drafted in general rather than specific terms – *ie*, it looks at a general characterisation that may cover a host of different causes of action (for example, “tort” or “contract”) and not individual causes of action specifically (for example, “negligence” or “deceit”). For the reasons explained above, s 2(1) is in both form and substance, a tort. There is no doubt that a statutory cause of action modelled after the tort of deceit should fall within the scope of s 6(1)(a) of the LA as an action “founded on tort”. The conclusion reached by this court in *Esben Finance* on the position of claims for unjust enrichment is a useful counterpoint. Unlike a claim under s 2(1) of the MA, which is a statutory extension of deceit and therefore part of the same genus of actions “founded on tort”, a claim for unjust enrichment is “a distinct and new branch of the law of obligations”, and thus cannot be subsumed within the categories of “contract” and “tort” under s 6(1)(a) of the LA: *Esben Finance* at [57]–[77]; *Turf Club Auto Emporium Pte Ltd v Yeo Boong Hua* [2018] 2 SLR 655 at [181].

70 For completeness, we accept (and agree with the Judge) that our conclusion that a claim under s 2(1) of the MA is an action “founded on a tort” would mean that it would in principle also come within the scope of s 24A(3) of the LA as an action for damages for “breach of duty” as the latter

encompasses all breaches of contract and torts (see [62] above). What remains to be addressed, as prefaced above and which we come to in due course below, is whether the possible operation of s 24A(3) of the LA would foreclose the operation of s 6(1)(a) in tandem with s 29(1)(c) of the LA.

An action to recover a sum recoverable under written law

71 It is not strictly necessary given our conclusion above that a claim under s 2(1) of the MA is caught by s 6(1)(a) of the LA, but we shall briefly address s 6(1)(d) of the LA – which deals with actions “to recover any sum recoverable by virtue of any written law ...” other than a penalty or forfeiture – as we have received submissions on it and the provision has been seldom considered in the local case law.

72 In short, we agree with the ICs that a claim under s 2(1) of the MA would also fall within the scope of s 6(1)(d) of the LA. As to the general scope of s 6(1)(d), we agree with Mr Huang who submitted before us that the phrase “any sum recoverable” under s 6(1)(d) should be given as expansive an interpretation as its literal meaning. In particular, there is no basis for confining s 6(1)(d) to claims for liquidated sums: *Rowan Companies Inc v Lambert Eggink Offshore Transport Consultants VOF* [1999] 2 Lloyd’s Rep 443 at 447; *Zedra Trust Co (Jersey) Ltd v THG plc* [2026] 2 WLR 479 at [135].

73 The line that has been drawn in the foreign case law as between claims within the scope of s 6(1)(d) of the LA and those outside it appears to be whether the written law on which the claim is founded provides for monetary remedies exclusively or includes other remedies: the former would be within the scope of s 6(1)(d), but not the latter. This is consistent with the decision of the High Court in *Lim Seng Wah v Han Meng Siew* [2016] SGHC 177, where the court held that

a claim for minority oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed), which provides for a wider range of remedies than the payment of money (for example, a buy-out order or a winding-up order), did not fall within the scope of s 6(1)(d) (at [164]). By contrast, in the present case, s 2(1) of the MA only offers a monetary remedy. The fact that it is for an unascertained sum – *ie*, damages – is neither here nor there as s 6(1)(d) does not draw such a distinction. Accordingly, we consider that, apart from s 6(1)(a) of the LA, a claim under s 2(1) of the MA would also fall within the scope of s 6(1)(d) of the LA. Indeed, this was the same conclusion reached by the English High Court in *Green* (at [37]–[40]).

Rescission of the SPA

74 We turn to the appellant’s claim for rescission of the SPA. As prefaced at [15] above, while this cause of action was largely overlooked below and only received brief treatment by the Judge, it has come to the fore in this appeal.

An overview of the law of rescission

75 The law of rescission has recently been observed to be an area that “remains riddled with conflicting decisions, poorly understood distinctions, and unresolved controversies”: Jordan English & Jonas Atmaz Al-Sibaie, “Unravelling Rescission” in *Issues in the Law of Rescission* (Jordan English & Jonas Atmaz Al-Sibaie eds) (Oxford University Press, 2026) (“*Unravelling Rescission*”) at p 1. For present purposes, it suffices to make two relatively uncontroversial but important points by way of introduction.

76 The first point is a definitional one. Rescission, at least in the contractual context (although it is not strictly so limited), is a mechanism by which a contract is *unwound* such that the parties are returned to their pre-contractual

positions, usually because of some defect in the parties' consent in the formation of the contract: *CDX* at [51]. It is important to disentangle "rescission", which operates retrospectively, with "termination" for breach of contract, which operates prospectively: *Johnson v Agnew* [1980] AC 367 at 392H–393B; *RBC Properties* at [138]. Indeed, it has often been observed that much of the confusion in the law of rescission has resulted from the historically loose usage of "rescission" in earlier authorities to describe these "two fundamentally different processes": *Unravelling Rescission* at pp 1–2; *The Law of Rescission* at paras 1.07–1.09. It would therefore conduce to clarity for such elision to be avoided.

77 The second point is on characterisation. Rescission is not monolithic but is a remedy at both common law and in equity: *CDX* at [52]. It should be borne in mind that there are important differences between common law rescission and equitable rescission, including the following:

- (a) First, common law rescission is a self-help remedy effected by a party's election, whereas equitable rescission is effected by court order and therefore requires a court action to be commenced: *Hopcraft v Close Brothers Ltd* [2025] 3 WLR 423 at [77] and [238].
- (b) Second, the grounds for rescission at common law are narrower than those in equity: *The Law of Rescission* at paras 10.23–10.26. So far as relevant to the present case, although equity gives a right to rescind a contract for *all* forms of misrepresentations, the common law only gives a right to rescission in respect of *fraudulent* misrepresentations: *CDX* at [52]. Since the appellant's case in OC 366 is founded on innocent misrepresentation, its claim for rescission of the SPA can only involve equitable, and not common law, rescission.

(c) Third, common law rescission is subject to a stricter requirement of *restitutio in integrum* – ie, the need for the claimant to make counter-restitution to return the defendant to his pre-contractual position – than equitable rescission: *CDX* at [54]; *The Law of Rescission* at para 18.17. In general terms, while the common law requires the claimant to make counter-restitution *in specie*, equity does not and is willing to grant rescission, if necessary on terms (such as monetary adjustments), as long as the court is satisfied that the defendant would not be unjustifiably prejudiced: *The Law of Rescission* at para 18.26.

The treatment of equitable remedies under the LA

78 Given that the appellant’s claim for rescission of the SPA is a claim for *equitable* rescission, the starting point is s 6(7) of the LA, which provides for claims for equitable relief to be subject to a limitation period, at least in some circumstances (the extent of which we discuss below):

Subject to sections 22 and 32, this section shall apply to all claims for specific performance of a contract or for an injunction or for other equitable relief whether the same be founded upon any contract or tort or upon any trust or other ground in equity.

It would be apparent that s 6(7) is a rather unique provision under the LA in that it does not prescribe any specific limitation period for claims for equitable relief, but requires a cross-reference to be made to other sub-sections of s 6 of the LA which do prescribe limitation periods.

79 In the court below, no attention was paid to s 6(7) of the LA. Instead, the Judge assumed that the appellant’s claim for rescission was directly subject to a six-year limitation period under s 6(1)(a) of the LA on the basis that it should be subject to the same time bar as the appellant’s claim under s 2(1) of the MA (see [19] above). It is likely that the potential relevance of s 6(7) was

overlooked as it was not fully appreciated that the appellant's claim to rescission was equitable in nature. This, we note, illustrates the importance of starting the analysis on limitation on the correct footing of a proper identification of both the number and nature of the causes of action before the court.

80 Nevertheless, before us, it is agreed between the parties and the ICs that the appellant's claim for rescission is subject to a six-year limitation period under s 6(7) of the LA based on an analogy to actions "founded on a contract or on tort" under s 6(1)(a) of the LA. As mentioned at [77] above, this linkage to s 6(1)(a) – or, for that matter, some other part of s 6 – is necessary because s 6(7) does not itself prescribe a limitation period but requires a cross-reference to another part of s 6 which does prescribe a limitation period.

81 We focus on the ICs' argument as the parties have largely associated themselves with the ICs' submissions. In a nutshell, the ICs submit that s 6(7) of the LA requires one of the limitation periods in s 6 to be applied by analogy to a claim for equitable relief. Moreover, this process of analogy is *mandatory* in that there will no claim for equitable relief that is not subject to any limitation period. In most cases, however, the result would be that a claim for equitable relief would be subject to a six-year limitation period under s 6(7) read with s 6(1)(a) as the latter is the "most generic private law category". This is precisely the position for the appellant's claim for (equitable) rescission in this case.

82 At the hearing, Professor Elliott emphasised that s 6(7) of the LA is expressed to cover the entire field of equitable reliefs in the light of the combination of the catch-all phrases: (a) "other equitable relief", which would include equitable rescission, apart from specific performance and injunctions which are separately mentioned; and (b) "other ground in equity", which made

the basis on which the entitlement to equitable relief arose irrelevant. While the ICs consider the statutory language sufficiently clear to be conclusive of the point, they further support their conclusion, to the extent necessary, by reference to the legislative material accompanying the introduction of s 6(7) of the LA into Singapore law in 1959 (see [113] below).

83 These are forceful points, but we respectfully disagree. In our judgment, s 6(7) of the LA is not as broad as the ICs suggest, and it does not apply to *all* claims for equitable relief. Instead, as we explain below, we are of the view that an important distinction must be drawn between claims for equitable relief that are within equity's *exclusive* jurisdiction and those which are within equity's *concurrent* jurisdiction with the common law, as s 6(7) of the LA only applies to the latter category. A claim for equitable rescission of a contract for innocent misrepresentation is a claim that is within equity's exclusive jurisdiction as the common law provides no remedy for innocent misrepresentation. The result is that, in the present case, no limitation period under the LA applies to the appellant's claim for (equitable) rescission of the SPA.

(1) The text of s 6(7) of the LA

84 We start with the text and context of s 6(7) of the LA. We agree with the ICs that the language of s 6(7) does appear to support their interpretation. As Professor Elliott pointed out, the phrase "whether the same be founded ... upon any trust or other ground in equity" is of a very broad import and is linguistically capable of sweeping up the whole field of claims for equitable relief. But, with respect, we think that the breadth of the language of s 6(7) is cut down to a significant extent by the two exceptions listed therein – namely, ss 22 and 32 of the LA – which we think provide important clues as to the true scope of s 6(7).

85 Starting with s 22 of the LA, simplifying somewhat, the provision deals with claims for breach of trust and for recovery of trust property. It suffices for us to refer to ss 22(1) and 22(2) of the LA, which provide as follows:

Limitation of actions in respect of trust property

22.—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.

86 The claims which s 22 of the LA deal with are equitable claims. The significance of a specific provision in s 22 that deals with a particular type of equitable claim, in our view, is this: if s 6(7) of the LA is of such an expansive scope as the ICs contend – that is to say, it catches *all* claims for equitable relief such that none falls through the cracks – then s 22, or at least s 22(2) (which prescribes a statutory limitation period of six years from the accrual of the right of action), would be otiose since actions for recovery of trust property or breach of trust would already be caught by s 6(7). It is trite that such an interpretation, that results in one provision swallowing the other, is one that should be avoided: *Natixis, Singapore Branch v Seshadri Rajagopalan* [2025] 1 SLR 1020 at [64]; *Blackstone Asia Real Estate Partners Ltd v Standard Chartered Bank (Singapore) Ltd* [2026] 1 SLR 251 (“*Blackstone*”) at [46]. And, to the extent that Parliament may have wished to exempt certain types of equitable claims

from a limitation period (which is the purpose which s 22(1) serves), it would have sufficed to legislate for that alone, and not along with s 22(2) which would overlap entirely with s 6(7). The fact that Parliament has legislated for a specific type of equitable claim, in our view, demonstrates that s 6(7) of the LA does not apply to *all* claims for equitable relief as the ICs (and the parties) contend.

87 The same point may be made in respect of s 32 of the LA, which along with s 22 is a provision which s 6(7) is expressly made subject to, although it may not be as straightforward. Section 32 preserves the application of equitable defences such as laches and acquiescence notwithstanding the statutory enactment of limitation periods under the LA:

Acquiescence

32. Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence, laches or otherwise.

88 Laches is a doctrine that bars the bringing of an equitable claim where there is “delay and the existence of circumstances that make it inequitable to enforce the claim”: *Re Estate of Tan Kow Quee* [2007] 2 SLR(R) 417 at [33]. It serves very much the same purpose as limitation periods, albeit it is a creature developed by the courts of equity rather than by statute. But given the identity in purpose, the effect of the ICs’ interpretation of s 6(7) of the LA as applying a limitation period to every claim for equitable relief, is that s 32 would be rendered otiose. This follows in the light of this court’s recent decision in *Pacmar*, in which we held that laches would not apply to a claim that is subject to a limitation period under the LA (at [21]).

89 At the hearing, when we brought *Pacmar* and the effect adopting a broad interpretation of s 6(7) of the LA may have on the role of laches under our law to their attention, Professor Elliott and counsel for the respondent, Mr Cavinder

Bull SC (“Mr Bull”), suggested that *Pacmar* should not be read as having decided that laches could *never* apply to an action to which a limitation period applied. Professor Elliott submitted that the view in *Pacmar* might be read down to only foreclosing the operation of laches in the limited sense of being constituted by mere delay, thus leaving room for laches in the true sense – *ie*, constituted by delay *and* some other factor rendering it inequitable for the claim to be brought – to operate notwithstanding that a limitation period may be applicable to the claim. Mr Bull agreed but took a different approach. First, he submitted that, as the court in *Pacmar* had apparently not been referred to s 32, *Pacmar* should not be read as a conclusive pronouncement on whether laches could apply to a claim that was subject to a limitation period. Second, Mr Bull emphasised that, because s 32 provided that nothing in the LA would affect the operation of laches and s 6(7) was expressly qualified by s 32, the statutory scheme of the LA in fact contemplated the possibility of a limitation period and laches applying to the same claim.

90 There is force in both Professor Elliott and Mr Bull’s submissions, but it suffices to say that the position is unclear. First, while Mr Bull makes the fair point that s 32, at least when read literally, suggests that the LA *has no effect* on the doctrine of laches, we have some concerns on how far this can be taken, as it is on the face of it “odd that equity should preclude a plaintiff from bringing a claim within the period that Parliament has set for that claim”: G E Dal Pont, *Law of Limitation* (LexisNexis, 2016) (“*Dal Pont*”) at para 3.32. Mr Bull is also incorrect to the extent that he suggested that *Pacmar* had broken new ground, as similar statements to the effect that laches and limitation periods are mutually exclusive in terms of the claims which they apply to can be found in a long line of authority pre-dating *Pacmar*: *John Archbold v William Scully* (1861) 9 HLC 360 at 383; *In re Pauling’s Settlement Trusts* [1962] 1 WLR 86 at 115 (affirmed

on appeal in *In re Pauling's Settlement Trusts* [1964] 1 Ch 303 at 353); *Cattley v Pollard* [2007] 3 WLR 317 at [151]; *Tay Tuan Kiat v Pritnam Singh Brar* [1985–1986] SLR(R) 763 at [6]; *Cytec Industries Pte Ltd v APP Chemicals International (Mau) Ltd* [2009] 4 SLR(R) 769 (“*Cytec*”) at [48]; *eSys Technologies Pte Ltd v nTan Corporate Advisory Pte Ltd* [2013] 2 SLR 1200 at [37]; *Esben Finance* at [113]–[123].

91 Second, in any case, the context in which this court had stated in *Pacmar* that laches should not apply to a claim governed by a limitation period was not a claim for equitable relief but an action to enforce an arbitral award, for which an express limitation period of six years had been prescribed by s 6(1)(c) of the LA. The *ratio* of *Pacmar*, therefore, only goes as far as to confirm that laches would not apply to a claim that is *not of an equitable nature* for which a limitation period has been prescribed: *Cytec* at [50]; *Esben Finance* at [122]. However, as this court noted in *Esben Finance*, the non-application of laches to a non-equitable claim that is subject to a limitation period rests on two strands of reasoning: (a) first, that laches, an equitable doctrine, should only be applied to equitable claims; and (b), second, that where there is a limitation period applicable to a claim, laches should not generally bar the claimant’s action before the expiry of the limitation period (at [119]). The former would suffice to explain the decision in *Pacmar*; on that view, the existence of a limitation period would be incidental rather than critical given that laches is not applicable as the claim in question is not equitable in nature.

92 What is more difficult, and which this court did not address in *Pacmar*, is the boundaries of the (narrower) second line of reasoning identified in *Esben Finance*, which will really only become relevant if the claim in question is a *claim for equitable relief* that is governed by a limitation period such that the risk of a conflict between laches and limitation arises. Put in another way, the

issue can be stated as whether it is possible for an action to which a limitation period applies to be precluded by laches at a time *before the limitation period has lapsed*. It seems to us that this was the context in which Professor Elliott suggested that it may be conceptually possible, even if unlikely in practice, for a claim to be barred by laches before the expiry of a limitation period applicable to it given that laches is *typically* defined as unconscionable delay rather than delay *simpliciter*.

93 It does not appear that any court in this jurisdiction has had occasion to consider this issue of whether laches may bar the bringing of an *equitable claim* that is subject to a limitation period before the expiry of the limitation period. This is not entirely surprising since, as the present appeal illustrates, the anterior question of when a claim for equitable relief is subject to a limitation period is not settled to begin with. The confusion is perhaps compounded by the fact that “laches” has not always been used uniformly in the case law. Thus, when courts have spoken in terms of laches not being applicable, such statements might, as Professor Elliott suggested, have been made on the premise of conceiving laches in terms of pure delay, and not, as it is more widely understood nowadays, as requiring some added factor of unconscionability, unfairness or inequity: J D Heydon, M J Leeming & P G Turner, *Meagher, Gummow & Lehane’s Equity: Doctrines & Remedies* (LexisNexis, 5th Ed, 2015) (“*Meagher, Gummow & Lehane*”) at para 38-010.

94 Looking at other jurisdictions, we accept that there is some authority that supports the view advanced by Professor Elliott and Mr Bull that laches and limitation periods may overlap in their coverage of equitable claims. It is fair to say, however, that the acceptance of this view has been couched in tentative or theoretical terms: see, for example, *P & O Nedlloyd BV v Arab Metals Co (No 2)* [2007] 1 WLR 2288 at [61]. The issue also appears to be unresolved under

Australian law, although it has been said that the balance of Australian authority supports the view that laches may apply even if a claim is subject to a limitation period: *Dal Pont* at paras 3.31–3.32.

95 Apart from these observations, we do not propose to resolve the tension between the statutory framework on the limitation of actions and the equitable doctrine of laches in the present case. It is not necessary for us to do so because the question at hand is simply what the existence of s 32 of the LA, and its preservation of the doctrine of laches under our law, speaks as to the scope of s 6(7) of the LA. In our view, much like how s 22 of the LA indicates that certain types of equitable claims do not fall within the scope of s 6(7), the retention of equity’s own mechanism for dealing with delay suggests that it is possible that certain categories of equitable claims are not within its scope and, in turn, not subject to any limitation period under the LA. This possibility means that there is sufficient ambiguity that it becomes necessary to refer to extraneous material to ascertain or clarify the purpose of s 6(7), and it is to that which we now turn.

(2) The purpose of s 6(7) of the LA

96 The provisional conclusion reached based on our analysis of the text and context of s 6(7) of the LA above, having regard in particular to ss 22 and 32 of the LA, is that not all claims for equitable relief fall within the scope of s 6(7). This raises the questions of: (a) what the purpose of s 6(7) is; and (b) how that shapes the relevant distinction, if there is one, between those equitable claims which fall within the scope of s 6(7) and those which do not.

97 Both of these questions were in fact considered by this court in *Yong Kheng Leong v Panweld Trading Pte Ltd* [2013] 1 SLR 173 (“*Panweld Trading*”). We note, however, that the account presented in *Panweld Trading* is

not without controversy as the ICs have advanced a different view. Given this, we shall reconsider the point afresh in the light of the opportunity presented by this appeal.

98 To understand the purpose of s 6(7) of the LA, it is necessary to situate it in the context of the historical development of the law of limitation *vis-à-vis* claims for equitable relief. What follows is a brief trip through time, for which we have derived considerable assistance from an illuminating essay by Professor William Swadling: see generally, William Swadling, “Limitation” in *Breach of Trust* (Peter Birks & Arianna Pretto eds) (Hart Publishing, 2002) (“*Swadling*”) at pp 320–335.

(A) THE HISTORICAL APPROACH OF THE COURTS OF EQUITY TO LIMITATION

99 The starting point is that provisions like ss 6(7) and 22 of the LA that expressly refer to equitable claims are a relatively modern innovation. Equitable claims were traditionally excluded from the scope of the statutes of limitation. Thus, the LA 1623 (UK), the forerunner of modern limitation legislation, did not expressly apply to any equitable claim: *Meagher, Gummow & Lehane* at para 36-005. Instead, equity developed its own rules for addressing delay in the form of laches. This, however, was not the only means by which equity set a time limit for bringing claims. To prevent claimants from evading a limitation period that would be applicable for a common law action through the device of seeking equitable relief, the courts of equity developed a practice of applying the limitation period for the common law action by analogy to the equitable claim, which practice Professor Swadling has called the “no side-stepping rule”: *Swadling* at p 323.

100 An illustration of the “no side-stepping rule” may be found in *Lockey v Lockey* (1719) Prec Ch 518 (“*Lockey*”). The claimant there had waited for more than six years after reaching majority – *ie*, when he became able to sue – before seeking an account against the defendant for the profits of the claimant’s estate while he had been an infant. Since an account at common law would have been time-barred pursuant to s 3 of the LA 1623 (UK), the claimant instead brought a bill for an account in equity. The Lord Chancellor, Lord Macclesfield, held that the claim should fail notwithstanding that an account in equity was not caught by the terms of the LA 1623 (UK). The report records his Lordship’s decision as follows (at 518):

In this case my Lord Chancellor was clear of opinion, that where one receives the profits of an infant’s estate, and six years after his coming of age he brings a bill for an account, that the Statute of Limitations is a bar to such suit, as it would be to an action of account at common law; for this receipt of the profits of an infant’s estate is not such a trust as, being a creature of a court of equity, the statute shall be no bar to, for he might have had his action of account against him at law, and therefore no necessity to come into this court for the account; but the reason why such bills are brought here, is from the nature of the demand, that they might have the discovery of books, papers, and the party’s oath, for the more easy taking of the account, which they cannot so well do at law; but if the infant lies by for six years after he comes of age, as he is barred of his action of account at law, so shall he be of his remedy in this court; and there is no sort of difference in reason between the two cases.

101 Two points should be emphasised from this passage. First, as a crucial piece of context, *Lockey* involved a case where the right that the claimant was seeking to enforce arose concurrently at common law and in equity. This is clear from Lord Macclesfield LC’s statement that there was “no necessity to come into [the] court [of equity] for the account”. Instead, a claimant could seek an account in equity in order to avail himself of equity’s power to order discovery, which power the common law courts did not have until the 1850s: see generally,

Hodge M Malek & Paul Matthews, *Disclosure* (Sweet & Maxwell, 6th Ed, 2023) at paras 1-11–1-13. *Lockey* was therefore not a case involving a right which is *exclusively* equitable in nature. The significance of this crucial distinction, between rights arising exclusively in equity and concurrently with the common law, is a point which we return to at [104]–[108] below.

102 Second, although it is not expressly stated, it appears that in holding that the claim for an equitable account before him was barred, Lord Macclesfield LC did *not* consider himself to be applying the doctrine of laches. Instead, what his Lordship had in mind was that the claim for an equitable account was barred *by the LA 1623 (UK)* notwithstanding that the statute did not apply in terms to claims for equitable relief. We draw this conclusion from: (a) first, the absence of any reference to laches or equitable doctrine; (b) secondly, the statement that “the Statute of Limitations is a bar to such suit”, which we take to mean that the claim for an equitable account was caught by the LA 1623 (UK); and (c) thirdly, the statement that the “remedy in this court” (*ie*, a court of equity) was barred in the same way as the claimant’s “action of account at law”, with there being “no sort of difference in reason between the two cases”.

103 The distinction between applying the doctrine of laches and the LA 1623 (UK) was brought out with greater clarity in the subsequent case of *Smith v Clay* (1767) 3 Bro CC 646 (“*Smith*”). Indeed, in *Smith*, Lord Camden LC referred to the two as distinct methods that equity used to refuse assistance to a claimant who had “slept upon his right” (at 646):

A court of equity which is never active in relief against conscience, or public convenience, has always refused its aid to stale demands, where the party has slept upon his right and acquiesced for a great length of time.

Nothing can call forth this court into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the Court is passive, and does nothing.

Laches and neglect are always discountenanced, and therefore from the beginning of this jurisdiction, there was always a limitation to suits in this court.

...

“Expedit reipublicae ut sit finis litium,” is a maxim that has prevailed in this court in all times, without the help of an act of parliament.

But, as the Court has no legislative authority, it could not properly define the time of bar, by a positive rule, to an hour, a minute, or a year; it was governed by circumstances.

But as often as parliament has limited the time of actions and remedies to a certain period, in legal proceedings, the Court of Chancery adopted that rule, and applied to similar cases in equity.

For when the Legislature had fixed the time at law, it would have been preposterous for equity (which, by its own proper authority, always maintained a limitation), to countenance laches beyond the period, that law has been confined to by parliament.

And therefore in all cases where the legal right has been barred by parliament, the equitable right to the same thing has been concluded by the same bar.

The same two points we have highlighted from Lord Macclesfield LC’s decision in *Lockey* can also be found in Lord Camden’s decision in *Smith*. First, Lord Camden LC clearly conceived of laches and the application of LA 1623 (UK) to equitable claims as different methods by which a court of equity barred the bringing of a claim on grounds of delay. This is apparent from his statement that laches had been “always discountenanced” and was “always a limitation to suits in [a] court [of equity]”, even “without the help of an act of parliament”. Second, like Lord Macclesfield LC, Lord Camden LC considered that the LA 1623 (UK) would apply to a claim for equitable relief where the right enforced in the court of equity was *concurrent* to a right at common law. This is clear from the last sentence in which his Lordship said that “where the legal right has been barred by parliament, the equitable right *to the same thing* has been concluded by the same bar” [emphasis added].

104 At this juncture, it is useful to explain the distinction between equity’s “exclusive”, “concurrent” and “auxiliary” jurisdictions which we have alluded to in our discussion of *Lockey* and *Smith* above. A convenient summary, which we had previously adopted in *Panweld Trading* (at [76]), is given by Professor Swadling as follows (see *Swadling* at p 323):

Although rarely encountered nowadays, it was usual until the Judicature Acts 1873–75 to classify the subject-matter of equity as falling into one of three “jurisdictions” of the court: the “concurrent” jurisdiction; the “auxiliary” jurisdiction; and the “exclusive” jurisdiction.

The “concurrent” jurisdiction comprises equity’s responses to common law claims. An example would be a claim for specific performance of a contract. Another would be an action for an account following a tort, while yet another would be an injunction to restrain a threatened breach of contract or tort. The common feature of these claims is that while the common law recognises the underlying cause of action, it does not give the particular relief sought. While the “concurrent” jurisdiction might be said to be concerned with matters of substantive *relief*, the “auxiliary” jurisdiction, by contrast, deals with matters of *procedure*. It might, for example, be that in a common law action the plaintiff wants discovery of certain documents. The common law has no power to order discovery, though equity does. If discovery is ordered by a court of equity, it does so within its “auxiliary” jurisdiction. Within the “exclusive jurisdiction” fall claims which the common law does not recognise at all. The most obvious is the claim of a beneficiary to enforce a trust. Trusts have never been recognised by the common law, so a beneficiary suing to enforce a trust can only obtain relief from a court of equity. Such claims are therefore said to be within the “exclusive” jurisdiction of the court.

[emphasis in original]

To summarise, the “concurrent jurisdiction” of equity is where equity gives a different remedy to the common law for the same cause of action; the “auxiliary jurisdiction” of equity is where equity gives some form of procedural assistance to aid the enforcement of a common law cause of action; and equity’s “exclusive jurisdiction” is where there is no parallel cause of action at common law but a cause of action in equity. It is worth highlighting, however, that in the present

age, the only real distinction that persists is between equity's exclusive and concurrent jurisdiction; in the light of the unification of the courts of common law and equity following the Judicature Acts, there no longer exists, at least in our jurisdiction, any distinction in the procedures applicable to common law and equitable claims.

105 *Lockey* and *Smith* make clear that the “no side-stepping rule” applies to claims in equity's concurrent and auxiliary jurisdictions. This is Professor Swadling's view, which we agree with. It is clear why the rule exists – the claimant is relying on a common law cause of action, to which a limitation period would apply, but is seeking to evade the limitation period under the guise of claiming equitable relief. To combat this, the court of equity treats itself as bound by the statute of limitations notwithstanding that the statute strictly does not apply to it. In this sense, equity can be said to be acting *by analogy* to the common law: although the statute does not speak directly to the courts of equity, they consider themselves to be bound by it. Any other result would mean that the limitation period for the common law cause of action would be “side-stepped” by bringing the claim in equity.

106 The position of claims in equity's exclusive jurisdiction is more complex. Professor Swadling interprets *Smith* as authority for the proposition that “where the plaintiff had no legal claim at all, the judges followed the lead given by the legislature and adopted the statutory period of limitation as the time limit for laches”: *Swadling* at p 324. We agree that a claim in equity's exclusive jurisdiction would be subject to laches since, as Lord Camden LC explained in *Smith*, laches was always applied by the courts of equity to matters in their jurisdiction. We respectfully disagree, however, that *Smith* is authority for the view that the application of laches should be tied to the duration of a limitation period. We do not think that Lord Camden LC in *Smith* was speaking of matters

in equity's exclusive jurisdiction at all. With the greatest respect, Professor Swadling overlooks that, while Lord Camden LC did speak of a court of equity refusing to "countenance laches beyond the period" prescribed by Parliament (which may suggest, at first blush, that he was speaking of applying the doctrine of laches which antedated the statute of limitations), his Lordship immediately went on to say that "where the legal right has been barred by parliament, the equitable right *to the same thing* has been concluded by the same bar" [emphasis added]. This makes clear that Lord Camden LC was speaking of a situation where there was a concurrent right at law and in equity (*ie*, a claim in equity's concurrent and auxiliary jurisdictions) and that *both* rights would be barred by the "same bar" instituted by the legislature (*ie*, the LA 1623 (UK)).

107 Further, Professor Swadling's view that "the time limit for laches" for a claim in equity's exclusive jurisdiction should match the time prescribed in the statute of limitations faces some impediments in principle and practice. In the first place, as to principle, given that laches is not concerned with delay *per se* but delay in circumstances that makes the pursuit of the claim unconscionable, it is not clear why laches would be defined in terms of any specified time limit. Indeed, in *Smith*, Lord Camden LC adverted to this when he stated that the courts of equity had not defined what constituted laches "by a positive rule, to an hour, a minute, or a year" as "it was governed by circumstances" (at 646). In any event, saying that a court of equity would follow a time limit prescribed in the statute of limitations for a claim in its exclusive jurisdiction is practically difficult as it begs the question *which* time limit would be applicable. A claim in equity's exclusive jurisdiction is *ex hypothesi* a claim for which there is no corresponding cause of action at common law. Unlike claims in equity's concurrent and auxiliary jurisdictions, there is no equivalent or underlying common law cause of action which the statute of limitations speaks to, which

leaves the court of equity in no doubt as to which limitation period it should apply by analogy. It would be artificial to force-fit an exclusively equitable claim into a cause of action at common law. It seems to us that the correct view is that a claim in equity's exclusive jurisdiction would be governed by laches, but the application of laches has nothing to do with any time limit prescribed by any statute of limitations.

108 The distinction between equity's exclusive and concurrent jurisdictions is therefore critical: a limitation period would not apply to the former but would to the latter. This was the historical practice of the courts of equity, before any reference was made to equitable claims in the statute of limitations.

(B) THE CODIFICATION OF THE HISTORICAL PRACTICE

109 This practice of limitation periods being applied by analogy to claims in equity's concurrent jurisdiction despite no reference being made to equitable claims in the statute of limitations itself continued until it was first placed on a statutory footing in 1939 as s 2(7) of the Limitation Act 1939 (c 21) (UK) ("LA 1939 (UK)"). The language of s 2(7) made clear that there was no substantive change in the law, and it was only a codification of the historical practice of the courts of equity applying the statute of limitations to matters in their jurisdiction. This was achieved by drafting, in negative terms, a general rule that equitable claims would *not* be subject to a limitation period, subject to an exception that claims which had hitherto been subjected to a limitation period would remain so subject:

This section shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, *except in so far as any provision thereof may be applied by the Court by analogy in like manner as the corresponding enactment repealed by this Act has heretofore been applied.* [emphasis added]

110 That s 2(7) of the LA 1939 (UK) did not extend the reach of the statute of limitations beyond that which the courts of equity had historically recognised can also be discerned from the report of the Law Reform Committee, whose recommendations led to the introduction of the LA 1939 (UK). Speaking of the position of equitable claims, the Committee acknowledged that while certain types of equitable claims were subject to limitation periods – specifically, where “the remedy in equity corresponds to a similar remedy in law” (*ie*, where equity has a concurrent jurisdiction with the common law) – there were certain types of equitable claims which were not subject to any limitation period at all (see Law Revision Committee, *Fifth Interim Report (Statute of Limitations)* (Cmd 5334, 1936) (“*Fifth Interim Report*”) at para 13):

Equitable claims are in some cases directly governed by a statute of limitations, such as claims to land or rent charges. *In other cases, such as specific performance or rescission of contracts on the ground of innocent misrepresentation, or setting aside gifts on the ground of undue influence, no period applies, but the plaintiff must act promptly and may be disqualified by laches.* In other cases, where a remedy in equity corresponds to a similar remedy in law, equity follows the analogy of the statute which applies to the corresponding common law remedy ...

It is clear from reading s 2(7) of the LA 1939 (UK) in the context of the *Fifth Interim Report* that s 2(7) was intended to preserve the historical distinction that had been observed by the courts of equity as between claims in its exclusive and concurrent jurisdictions.

111 Subsequently, the LA 1939 (UK) was consolidated, along with a number of other enactments, into the Limitation Act 1980 (c 58) (UK) (“LA 1980 (UK)”), which remains in force in England and Wales today. Section 2(7) of the LA 1939 (UK) finds its modern successor in the form of s 36(1) of the LA 1980 (UK):

The following time limits under this Act ... shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any such time limit may be applied by the court by analogy *in like manner as the corresponding time limit under any enactment repealed by the Limitation Act 1939 was applied before 1st July 1940*. [emphasis added]

It is clear that s 36(1) of the LA 1980 (UK) preserves the historical practice of the courts of equity to the issue of limitation given that it retains the negative phraseology of s 2(7) of the LA 1939 (UK), and also expressly states that only equitable claims which were subject to a limitation period prior to the LA 1939 (UK) would be subject to a limitation period under s 36(1).

(C) THE POSITION IN SINGAPORE

112 The position under Singapore law, however, appears somewhat different on first impression. This is because, while s 2(7) of the LA 1939 (UK) was received into Singapore law in the shape of s 6(6) of the Limitation Ordinance 1959 (No 57 of 1959) (“Limitation Ordinance 1959”), Parliament departed from the negative phraseology of s 2(7), and preferred to draft what appears to be a general rule that equitable claims should be subject to a limitation period:

Subject to the provisions of sections 22 and 32 of this Ordinance the provisions of this section shall apply (if necessary by analogy) to all claims for specific performance of a contract or for an injunction or for other equitable relief whether the same be founded upon any contract or tort or upon any trust or other ground in equity.

Successive provisions culminating in what is now s 6(7) of the LA have been framed in identical terms to s 6(6) of the Limitation Ordinance 1959, save for the deletion of the phrase “(if necessary by analogy)” when the Limitation Ordinance 1959 was revised and re-enacted as the Limitation Act (Cap 10, 1970 Rev Ed) pursuant to the Revised Edition of Laws Act (No 16 of 1996), which change this court in *Panweld Trading* confirmed did not substantively alter the

scope of the provision (at [64]–[66]). Given this, if there was any change in the law from English law and the historical practice of the courts of equity, the critical turning point would have been in 1959 when s 2(7) of the LA 1939 (UK) reached our shores and was enacted in different terms as s 6(6) of the Limitation Ordinance 1959. The question as to the purpose of s 6(7) of the LA thus comes down to whether Parliament intended, when it enacted s 6(6) of the Limitation Ordinance 1959, to set Singapore law on a different course from English law on the treatment of equitable claims in the law of limitation.

113 The ICs answer this in the affirmative. According to them, s 6(6) of the Limitation Ordinance 1959 *was* a departure from the English law position and, in turn, the historical approach of the courts of equity which was preserved by s 2(7) of the LA 1939 (UK); Parliament sought to consign these complexities to the annals of history and ushered in a straightforward rule of claims for equitable relief always being subject to a limitation period, which they suggest would be of six years in most cases based on an analogy to s 6(1)(a) of the LA. Apart from the language of the provision, the ICs submit that this claim is also supported by the legislative material accompanying the introduction of s 6(6) of the Limitation Ordinance 1959. The overall picture painted is that Parliament intended to simplify the law of limitation through the Limitation Ordinance 1959 and, in line with this, established a *tabula rasa* for equitable claims by subjecting them to a six-year limitation period save for two exceptions under ss 22 and 32 of the LA. In this regard, the ICs highlight that:

- (a) in the Explanatory Statement of the Limitation Bill 1959 (State of Singapore, Government Gazette, Supplement No 17 of 24 August 1959) (“Limitation Bill 1959”), it was written that “[w]ith regard to claims based on trust or other equitable grounds it is provided that the

six-year limitation period should apply”, subject to two qualifications under ss 22 and 32 of the Limitation Ordinance 1959; and

(b) in the Minister for Law’s speech in Parliament at the second reading of the Limitation Bill 1959, it was said that the Bill was intended to “effect a simplification ... and an improvement in the law relating to the limitation of actions”: *Singapore Parl Debates*; Vol 11, Sitting No. 9; Col 58; [2 September 1959] (K M Byrne, Minister for Labour and Law).

114 In our judgment, the ICs’ argument is pitched at too high a degree of abstraction. It is no doubt correct, as the ICs submit, that the general purpose of the Limitation Ordinance 1959 was to simplify the law of limitation in Singapore. We do not think, however, that it follows from this that s 6(6) of the Limitation Ordinance 1959 – and, in turn, s 6(7) of the LA – should be interpreted as laying down a blanket rule that all equitable claims would be subject to a limitation period and that the relevant limitation period would, in most cases, be a six-year limitation period by analogy to s 6(1)(a). The problem with attributing such an intention to Parliament is that it begs the question why, if that was indeed Parliament’s intention, Parliament did not simply legislate for a six-year limitation period – or, for that matter, *a* limitation period – for claims for equitable relief, but chose to retain the device of requiring another provision that did prescribe a limitation period to be applied by analogy. In our view, the fact that Parliament did not do the obvious thing indicates that it was well within its contemplation that there would remain certain types of equitable claims that did not fall within the scope of s 6(6) of the Limitation Ordinance 1959, as was the case with the historical practice of the courts of equity, which only applied limitation periods to claims in equity’s concurrent jurisdiction with the common law.

115 Sections 22 and 32 of the LA confirm this impression. As we have noted, it would have been in vain for Parliament to legislate specifically for claims for the recovery of trust property and breach of trust under s 22 if s 6(7) of the LA already covered all equitable claims (see [86] above). Claims relating to trust property and breach of trust are the quintessential example of claims in equity’s exclusive jurisdiction. It seems to us that, when taken together with s 6(7), s 22 indicates that Parliament intended for claims in equity’s exclusive jurisdiction to remain outside the scope of the LA unless specifically legislated for. In this way, there is no overlap between ss 6(7) and 22(2) of the LA, thus avoiding the untenable situation of the latter being read into redundancy by giving the former an unduly broad interpretation. And, following from this, s 32 plays the role of “sweeping up” equitable claims that would not be subject to any limitation period by clarifying that these claims would be subject to the equitable doctrines of laches and acquiescence (as they always have been), thus avoiding an equally untenable situation of there being a certain class of claims for which a claimant need not act timeously and can delay prosecuting with impunity. Seen in this light, ss 6(7), 22 and 32 operate in tandem to prescribe a workable and coherent system for dealing with the issue of delay in the pursuit of equitable claims: s 6(7) deals with claims in equity’s concurrent jurisdiction, while ss 22 and 32 deal with claims in equity’s exclusive jurisdiction. Section 6(6) of the Limitation Ordinance 1959, despite its differences from s 2(7) of the LA 1939 (UK), was not a departure from the historical treatment of equitable claims in the law of limitation, but an affirmation of it in the same way as s 2(7) was for English law.

116 We are not persuaded that the Explanatory Statement of the Limitation Bill 1959 and the Minister’s speech at the second reading of the Bill point to a different result. All that the Minister’s speech establishes is that, *at a general*

level, the intention of the Limitation Ordinance 1959 was to simplify the law of limitation. This, however, says nothing specific about how s 6(6) within it was to be interpreted. And although the Explanatory Statement goes further as it did state that equitable claims should be subject to a six-year limitation period (subject to ss 22 and 32 of the Limitation Ordinance 1959), the fact remains that: (a) Parliament could have drafted s 6(6) as expressly having such an effect, but did not do so; and (b) ss 22 and 32, as we have just explained, indicate that not all claims for equitable relief were caught by s 6(6). It is likely, in our view, that the Explanatory Statement reflected Parliament's expectation that, *to the extent that a claim for equitable relief was subject to a limitation period*, that limitation period would be a six-year limitation period, because that was (and is) the most common limitation period under s 6. The Explanatory Statement thus addressed the *result* where a limitation period was applied to an equitable claim and not the anterior question of *when a limitation period would be applicable* in the first place.

117 It should also be borne in mind that, if the ICs are correct that s 6(6) of the Limitation Ordinance 1959 was intended to subject all claims for equitable relief to a limitation period, s 6(6) would have represented a total upheaval in the way equitable claims were treated in the law of limitation. Given how radical a change this would have been to the existing law, it would be unsafe, in our view, to attribute to Parliament an intention to make such a drastic change absent the clearest evidence – either through the language of s 6(6) itself or in the legislative material – that this was indeed its intention. The semantic differences between s 6(6) and s 2(7) of the LA 1939 (UK) do not suffice. Nor do general statements about the Limitation Ordinance 1959 being intended to make the law of limitation simple or that equitable claims would be subject to a six-year limitation period amount to evidence of such cogency. In our recent

decision in *Blackstone*, we had cautioned that it could not be assumed that the specific purpose of a given provision would coincide with the general purpose of the written law as a whole (at [51]–[55]). By parity of reasoning, statements of the purpose of a particular provision or written law of such generality as those in the Explanatory Statement and the Minister’s speech cannot be assumed to be a precise or exhaustive statement of Parliament’s intention as to how s 6(6) of the Limitation Ordinance 1959 was to be interpreted and operate.

118 In the final analysis, we consider that greater weight should be placed on the historical context of s 6(7) of the LA (the historical practice of the courts of equity and the subsequent codification of this practice through s 2(7) of the LA 1939 (UK)), as well as the relationship between it and ss 22 and 32 of the LA (which provisions deal with claims that are not dealt with by s 6(7) itself), rather than the literal meaning of the language of s 6(7) (which suggests that a limitation period should be applied to all equitable claims) and general statements of legislative intention (in the Explanatory Statement of the Limitation Bill 1959 and the speech of the Minister for Law at the second reading of the Bill).

(3) Summary and conclusion

119 To summarise our analysis above, s 6(7) of the LA codifies the historical practice of the courts of equity applying limitation periods to claims within equity’s concurrent jurisdiction with the common law. The rationale of this practice was to prevent a claimant from reframing a common law cause of action as a claim for equitable relief to evade the operation of a limitation period that would be applicable to the common law cause of action. Claims within equity’s exclusive jurisdiction fall outside this rationale and are accordingly not subject to a limitation period unless expressly legislated for. Thus, when the court is

faced with a claim for equitable relief, the analysis on limitation can be summarised as follows:

- (a) First, is the claim for equitable relief one for which a specific limitation period has been prescribed?
- (b) Second, if not, is the claim for equitable relief within equity's exclusive or concurrent jurisdiction?
 - (i) If the claim is within equity's exclusive jurisdiction, it would not be subject to any limitation period but would be subject to the doctrine of laches.
 - (ii) If the claim is within equity's concurrent jurisdiction, s 6(7) of the LA would apply, and the claim would be subject to the same limitation period under s 6 of the LA that would be applicable to the common law cause of action that corresponds to the claim in equity.

120 Applying this framework to the present case, the appellant's claim for rescission of the SPA, which is founded on innocent misrepresentation, is not subject to any limitation period under the LA. No limitation period is expressly prescribed for such a claim. And, as mentioned at [83] above, relief from innocent misrepresentation falls squarely within the exclusive jurisdiction of equity; it is only in respect of fraudulent misrepresentation that equity shares a concurrent jurisdiction with the common law in giving a right to rescission. Section 6(7) of the LA does not apply. Instead, the relevance of the appellant's delay (if any) would be assessed within the rubric of laches, which the respondent has not invoked and is thus not within the scope of this appeal.

121 For completeness, we are cognisant that our conclusion on the operation of s 6(7) of the LA differs from what appears to be the prevailing understanding. The interpretation we have adopted, which draws a distinction between equity’s exclusive and concurrent jurisdictions, was in fact recognised in our earlier decision in *Panweld Trading* (at [75]–[77]). The trend in decisions after *Panweld Trading* has, however, been for the courts to apply the literalist interpretation of s 6(7) advanced by the ICs which we have rejected. Given this, in the interests of promoting clarity in this area of the law and pre-empting uncertainty that may arise in the light of our decision, we propose to briefly consider the position of two types of equitable claims which are quite commonly encountered by our courts.

122 The first is a claim for breach of fiduciary duty. In *Dynasty Line Ltd v Sukanto Sia* [2014] 3 SLR 277 (“*Dynasty Line*”), s 6(7) of the LA was applied to such a claim (at [53]), notwithstanding that it is a claim which arises in equity’s exclusive jurisdiction, fiduciary duties being obligations arising in equity and not under the common law. In our view, while claims for breach of fiduciary duty are claims within equity’s exclusive jurisdiction and thus outside the scope of s 6(7), they are a type of claim for which a limitation period is applicable. Specifically, such claims would be within the scope of s 22(2) of the LA based on an analogy being drawn to claims for breach of trust. The court in *Dynasty Line* in fact accepted that a claim for breach of fiduciary duty fell within the scope of s 22 of the LA, as despite holding that such a claim was subject to a limitation period under s 6(7) of the LA, it also held that the exception under s 22(1)(a) of the LA – which disappplies a limitation period for claims in respect of fraud or fraudulent breach of trust – was applicable on the facts. Given that s 22(1) is a specific exception to s 22(2), it would be more apposite for claims for breach of fiduciary duty to be treated as claims for breach of trust for the

purposes of s 22(2). Indeed, this is not a novel position, as it has been well-established for over a century, especially in the context of company directors, that fiduciaries stand in an analogous position to trustees and are treated as such for the purposes of limitation: *In re Lands Allotment Company* [1894] 1 Ch 616 at 631; *Burnden Holdings (UK) Ltd v Fielding* [2018] AC 857 at [11]; *Re Medora Xerxes Jamshid* [2024] 5 SLR 1006 at [45]. It has also been held that the analogy applies even in respect of breaches of fiduciary duty that are not of a custodial nature (*ie*, breaches which relate to the fiduciary's control over property), and s 22(2) of the LA thus applies to all claims for breach of fiduciary duty regardless of the nature of the breach: *First Subsea Ltd v Balltec Ltd* [2018] Ch 25 at [62]–[63]. In principle, while s 6(7) of the LA would not apply to claims for breaches of fiduciary duty, such claims *would* be subject to a six-year limitation period in the result, albeit pursuant to s 22(2) of the LA.

123 The second type of claim is those which are ancillary or accessorial to breach of trust or fiduciary duty. In practice, such allegations are typically framed in terms of claims for dishonest assistance or knowing receipt, which like the underlying claim for breach of trust or fiduciary duty they relate to, are claims in equity's exclusive jurisdiction. We note that, in *Esben Finance*, these claims were assumed – as the point was not argued – to be subject to a six-year limitation period under s 6(7) of the LA on the premise that s 6(7) applied to *all* equitable claims (at [86]). In the light of this, to the extent that *Esben Finance* is interpreted as authority for the view that claims for dishonest assistance and knowing receipt fall within the scope of s 6(7) of the LA, it is at odds with our considered analysis of s 6(7) above and should not be followed in the light of our decision in this case.

124 In our judgment, dishonest assistance and knowing receipt claims, being forms of liability arising in equity's exclusive jurisdiction, would not be subject

to a limitation period and would instead be governed by laches. It is well-established that such claims do not fall within the scope of s 22 of the LA. In *Panweld Trading*, this court approved the persuasive analysis propounded by Millett LJ (as he then was) in *Paragon Finance plc v D B Thakerar & Co* [1999] 1 All ER 400, which drew a distinction between “Class 1” and “Class 2” constructive trusts (at [45]–[46]), and held that only the former fell within the scope of s 22 (at [51]). The difference between the two categories of constructive trusts, broadly speaking, is that: (a) Class 1 constructive trustees are persons who have assumed fiduciary obligations to the claimant; and (b) Class 2 constructive trustees are persons who have not assumed any prior fiduciary obligation but who incur equitable liability to the claimant due to their wrongful interference with a fiduciary or trust relationship: *Peconic Industrial Development Ltd v Lau Kwok Fai* (2009) 12 HKCFAR 139 at [19]. Given that claims for dishonest assistance and knowing receipt are usually brought against persons who are not themselves fiduciaries of the claimant, defendants to such claims would ordinarily be Class 2 constructive trustees and outside the scope of s 22 of the LA. It follows that no limitation period would be applicable to such claims.

125 We would close by reiterating that the distinction between equity’s exclusive and concurrent jurisdictions is of fundamental importance. A claim that is within equity’s exclusive jurisdiction falls outside the scope of s 6(7) of the LA (and thus the LA itself) unless, like s 22 of the LA, it is a type of claim for which specific provision has been made. Beyond this general guidance and the examples above, we do not propose to further consider the position of other types of equitable claims; whether they fall within the scope of the LA, and the reasons for this, are matters for incremental development in future cases based on the parameters we have set above.

The time when limitation began to run against the appellant

126 Given our conclusion that the appellant's claim for damages under s 2(1) of the MA is subject to a six-year limitation period under ss 6(1)(a) or 6(1)(d) of the LA, we turn to the issue of when the limitation period commenced. The general rule adopted in most provisions of the LA, including s 6(1) of the LA, is that the limitation period begins running from the date of the accrual of the cause of action. This, however, is subject to certain exceptions which are mostly set out in Part 3 of the LA, which provide for an alternative starting point for the running of the limitation period.

127 In this case, it is agreed between the parties that the appellant's cause of action under s 2(1) of the MA accrued in August 2016, being the time when the appellant received the keys to the Medical Unit. Given that OC 366 was filed more than six years from this time, the appellant's claim under s 2(1) of the MA would be time-barred under s 6(1) of the LA unless an exception applies to either extend the limitation period or postpone the commencement of the limitation period. The appellant has invoked two such exceptions, namely, ss 24A(3)(b) and 29(1)(c) of the LA. The Judge held that the latter did not apply to a claim under s 2(1) of the MA, and found that while the former did apply, it was of no assistance to the appellant as the appellant's claim would be time-barred even under it (see [18] and [20] above).

128 Although the appellant has challenged the Judge's decision in its entirety, the arguments before us have centred around s 29(1)(c) of the LA, likely because the Judge had expressed the view that the appellant would not have been out of time if s 29(1)(c) were applicable to its claims (see [20] above). For reasons which we expand on below, we disagree with the Judge that s 29(1)(c) does not apply in this case. In our judgment, a claim for damages for

misrepresentation under s 2(1) of the MA is an action for “relief from the consequences of a mistake” under s 29(1)(c) of the LA. The short point is that misrepresentation is a species of mistake. Accordingly, the appellant is entitled to rely on s 29(1)(c) to postpone the commencement of the limitation period under s 6(1) of the LA that is applicable to its claim under s 2(1) of the MA to the time when it did or could with reasonable diligence have discovered that the Representations were false.

129 Our conclusion differs from the ICs’ and the respondent’s submissions. Although there was initially some variance in their positions, the respondent’s position largely converged with that of the ICs at the hearing. It may be useful, by way of introduction, to outline their respective submissions and to signpost our responses to them which we elaborate on in our analysis below.

130 The ICs submit that, to the extent that a claim for rescission of a contract for a misrepresentation is subject to a time bar (which, for the reasons explained in the previous section, we do not accept), such a claim would be an action for “relief from the consequences of a mistake” under s 29(1)(c) of the LA. They therefore agree that a misrepresentation can be characterised as a mistake for the purposes of s 29(1)(c). However, the ICs submit that, if the relief sought is *damages*, such a claim (like the appellant’s claim under s 2(1) of the MA) does not fall within the scope of s 29(1)(c). The ICs’ argument, therefore, focuses on whether the word “relief” in s 29(1)(c) includes claims for damages. In their view, claims for damages do not fall within the scope of s 29(1)(c) but are instead governed by s 24A(3) of the LA. The premise of this submission is that, where a claim conceivably falls within both ss 6 and 24A of the LA, the latter displaces the former, such that it is not possible for the claimant to rely on the combination of s 6 and some other provision such as s 29(1)(c). This raises the question, which we had adverted to in our analysis on the applicable limitation

period(s) to the appellant's claim under s 2(1) of the MA, as to the relationship between ss 6(1) and 24A of the LA (see [60]–[62] above).

131 It is clear, even though it has not been expressly acknowledged by the ICs, that the subtext of their position that a claim for damages falls outside the scope of s 29(1)(c) is a need to reconcile ss 24A and 29(1)(c), which they do by removing from the scope of the latter claims that would fall within the scope of the former. The apparent discomfort with a claim falling within both provisions, as we have noted, is that the LA only specifies that the provisions of Part 2 (such as s 6) are subject to the provisions of Part 3 (such as ss 24A and 29(1)), but does not regulate apparent conflicts between two provisions in Part 3 where both appear to be applicable (see [61] above). In the course of explaining our conclusion that s 29(1)(c) is applicable to the appellant's claim under s 2(1) of the MA, it would therefore be necessary for us to address the proper relationship between ss 6, 24A and 29(1)(c) of the LA.

132 While the respondent had originally taken the position in its written submissions that there was no basis for excluding claims for damages from the scope of s 29(1)(c) of the LA, Mr Bull adopted a different position at the hearing and submitted that s 24A of the LA was a complete code for claims for damages, which meant that s 29(1)(c) was not applicable to the appellant's claim under s 2(1) of the MA. This argument is of the same substance as the ICs' submission that a claim for damages falls exclusively within the scope of s 24A and is therefore outside the scope of s 29(1)(c). But, departing from the ICs' position, Mr Bull raised a further objection that a misrepresentation was in any event not a mistake either generally or in the context of s 29(1)(c) specifically.

133 For the reasons explained below, we consider that the ICs' and Mr Bull's argument that s 24A forecloses the application of s 29(1)(c) starts from the

mistaken premise that s 24A *completely* displaces s 6 such that it is not possible, if a claim falls within the scope of s 24A, for the claimant to rely on a combination of ss 6 and 29(1)(c). We thus do not accept the ICs' submission that the word "relief" in s 29(1)(c) should be read down as not including a claim for damages in order to eliminate any overlap between ss 24A(3) and 29(1)(c). In our view, the correct starting point is s 6, from which it is open to the appellant to rely on *either* s 24A(3)(b) *or* the combination of s 6 and 29(1)(c). Separately, as far as Mr Bull's objection to characterising a misrepresentation as a "mistake" under s 29(1)(c) is concerned, it suffices to say that we do not agree with the argument as a matter of principle.

134 Having set out the parameters and our broad conclusions above, we turn to develop our analysis proper. We do so in two parts. First, we explain our view that a claim founded on a misrepresentation is an action for "relief from the consequences of a mistake" under s 29(1)(c) of the LA (see [135]–[156] below). Second, we then turn to address the relationship between ss 6, 24A and 29(1) of the LA, during which we will explain our conclusion that s 24A does not completely displace s 6, such that it is open to the appellant to rely on ss 6 and 29(1)(c) of the LA notwithstanding that s 24A may also be applicable (see [157]–[167] below).

Whether s 29(1)(c) of the LA applies to the appellant's claim under s 2(1) of the MA

A claim for relief from a misrepresentation is an action for "relief from the consequences of a mistake"

135 Section 29(1) of the LA provides as follows:

Postponement of limitation period in case of fraud or mistake

29.—(1) Where, in the case of any action for which a period of limitation is prescribed by this Act —

(a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent;

(b) the right of action is concealed by the fraud of any such person as aforesaid; or

(c) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run until the claimant has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it.

136 To begin with, the parties and the ICs are agreed that, for s 29(1)(c) of the LA to apply, a “mistake” must be an essential ingredient of the claimant’s cause of action. This was also the Judge’s view: Judgment at [95]–[101]. This requirement, which controls the scope of s 29(1)(c), finds support in a long line of authority: *Phillips-Higgins v Harper* [1954] 1 QB 411 at 418–419; *Test Claimants in the FII Group Litigation v Revenue and Customs Comrs* [2012] 2 AC 337 at [46]–[63] and [177]–[185]; *Test Claimants in the FII Group Litigation v Revenue and Customs Commissioners* [2022] AC 1 (“*Test Claimants (No 2)*”) at [41]; *Tenaga Nasional Bhd v Kamarstone Sdn Bhd* [2014] 2 MLJ 749 at [25]. Indeed, it is clear from the language of s 29(1)(c) itself. Section 29(1)(c) does not operate simply because the claimant was unable to bring an action due to a mistake over his rights. Instead, it applies only when the claimant is seeking “relief from the consequences of a mistake”; in other words, where the claimant’s entitlement to the remedy sought arises or flows from a mistake he had made. The mistake must therefore be part of the cause of action itself, rather than simply collateral to it.

137 The question in this case is therefore whether a claim under s 2(1) of the MA is an action for “relief from the consequences of a mistake” under s 29(1)(c)

of the LA. This, in substance, turns on whether a mistake by the claimant is an essential ingredient of a claim for damages to compensate for loss suffered from entering into a contract under the inducement of a misrepresentation.

138 As mentioned above, we answer this in the affirmative as we consider misrepresentation to be a species of mistake. A mistake is a belief that is untrue or erroneous. A misrepresentation also involves a belief that is untrue or erroneous, save that the *cause* of the belief is a representation by another person. Section 29(1)(c) of the LA focuses solely on whether the claimant is seeking relief from the consequences of a mistake; it does not draw any distinction based on the cause of the mistake. It seems to us to be intuitive that a misrepresentation would come within the scope of s 29(1)(c) of the LA.

139 Indeed, there is a legion of authority which supports this view of mistake as the genus and misrepresentation as the specie. In a leading treatise on the law of misrepresentation and mistake, Professor John Cartwright comments that while “[m]isrepresentation and mistake are generally treated entirely separately ... this tends to mask the fact that misrepresentation is really a sub-category of mistake: induced mistake”: John Cartwright, *Misrepresentation, Mistake and Non-Disclosure* (Sweet & Maxwell, 7th Ed, 2025) at para 1-03. The learned authors of *The Law of Rescission* have observed to similar effect that “[a]ll misrepresentations involve a mistake[,] [b]ut there the mistake is of a particular kind: it is induced by a representation” (at para 7.02). More than half a century ago, Professor S J Stoljar wrote that “a misrepresentation causes or induces a mistake, for unless the representee is in error he does not even have a misrepresentation to complain about”: S J Stoljar, *Mistake and Misrepresentation: A Study in Contractual Principles* (Sweet & Maxwell, 1968) at pp 83–84.

140 The case law tells a similar story. Consistent with Professor Stoljar’s view that “a misrepresentation causes or induces a mistake”, the UK Supreme Court in *Cramaso LLP v Ogilvie-Grant* [2014] AC 1093 stated that the law of contractual misrepresentation “proceeds on the basis that a representation made in the course of pre-contractual discussions may produce a misapprehension in the mind of the other party” which “may lead to the setting aside of the contract as being vitiated by error or fraud” (at [16]). Indeed, as a corollary of this, it has routinely been held that a claimant who does not believe in the truth of the representation or knows of the falsity of the representation – and therefore does not labour under any erroneous belief – cannot succeed in a claim for misrepresentation: *Peekay Intermark Ltd v Australia and New Zealand Banking Group Ltd* [2006] 2 Lloyd’s Rep 511 at [40]; *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 at [34]–[41].

141 As against this, however, there is one notable outlier that throws doubt on the characterisation of misrepresentation as a species of mistake. This takes the form of the decision of the UK Supreme Court in *Zurich Insurance Co plc v Hayward* [2017] AC 142 (“*Zurich Insurance*”), which provides ostensible support for the view that a claim for misrepresentation may succeed even if the representee *did not believe* in the truth of the representation and even positively denied it. It is thus necessary to consider it in some detail in so far as it appears to undermine the integrity of the theory of misrepresentation as a species of mistake.

142 The facts of *Zurich Insurance* were somewhat peculiar as they involved representations made in the context of litigation between the parties and spanned over two sets of proceedings. Mr Hayward brought a claim against his employer seeking compensation for injuries he had suffered in the course of his employment. The employer’s defence was conducted by Zurich as its insurer.

Although liability was admitted, Zurich disputed the quantum of Mr Hayward's claim on the basis that he had exaggerated the extent of his injuries. Indeed, Zurich went as far as to plead this in its defence in the trial on quantum, relying on video evidence it had obtained of Mr Hayward engaging in heavy work that was inconsistent with the injuries he claimed to have suffered. Nevertheless, shortly before trial, the parties reached an agreement and Zurich agreed to pay a sum lesser than what Mr Hayward had sought, but which was still very substantial, in full and final settlement of Mr Hayward's claims.

143 Sometime after, Mr Hayward's neighbours came forward with evidence that his claim of serious back injury had been dishonest. Armed with this, Zurich commenced fresh proceedings against Mr Hayward seeking to rescind the earlier settlement as well as damages for deceit. At first instance, a county court judge found that Zurich had not believed Mr Hayward's representations of his injuries but had nonetheless been influenced by the representations to settle his claim on the terms it did. This was sufficient to entitle Zurich to rescind the settlement. This was reversed on appeal by the English Court of Appeal. The decision of the first instance judge in Zurich's favour was however reinstated by the UK Supreme Court.

144 Both Lord Clarke of Stone-cum-Ebony JSC and Lord Toulson JSC (with whom the other members of the court also agreed) considered that the fact that Zurich had not believed in the truth of Mr Hayward's representations did not prevent it from succeeding in its claim to rescind the settlement. Lord Clarke JSC stated that "it is not necessary, as a matter of law, to prove that the representee believed that the representation was true", and it would suffice for the representee to have been influenced by the representation in the sense of having been induced to act as he did due to the representation (at [19], [20], [26] and [27]). Although Lord Toulson JSC expressed agreement with

Lord Clarke JSC, his Lordship's reasoning appears to have been narrower. He reasoned that since "Mr Hayward's deceitful conduct was intended to influence the mind of [Zurich], not necessarily by causing them to believe him, but by causing them to value his litigation claim more highly than it was worth", the fact that he had achieved his purpose by inducing Zurich to settle on the terms that it did meant that it was irrelevant if Zurich had believed the representations (at [67] and [71]).

145 In essence, *Zurich Insurance* suggests that the representee need not be misled to succeed in a claim for misrepresentation. It would follow from this that a mistake is not an essential element of a claim for misrepresentation in so far as a claimant may succeed in such a claim even if he does not labour under any mistaken belief. It is therefore unsurprising that Mr Bull relied on *Zurich Insurance* to support the claim that misrepresentation is of a different substance than mistake.

146 However, in our judgment, the decision in *Zurich Insurance* is of doubtful value for at least three reasons.

147 First, as a matter of principle, it is one thing to say that a claimant may succeed in a claim for misrepresentation even if he has some doubt or suspicion about the truth of the representation, but quite another to say that a claimant need not believe in the representation *at all*. At the hearing, Mr Bull suggested that where a representee may "genuinely be in two minds" as to whether a representation made to him was true, the existence of doubt or suspicion would mean that it cannot be said that the representee was under any mistake. We disagree. Mr Bull's attempt to set up a fence between a mistaken belief and the existence of any doubt or suspicion is a flawed dichotomy as it is possible for a

claimant to harbour some doubt, and yet believe that the representation is true, such that he is mistaken in the event that his doubt is realised.

148 The line, in our view, falls to be drawn at whether the level of doubt or suspicion of the claimant crossed the threshold of leading the claimant to believe that it was *more likely than not* that the representation was untrue: *Marine Trade SA v Pioneer Freight Futures Co Ltd BVI* [2010] 1 Lloyd's Rep 631 at [76]–[77]. If that threshold is crossed, it would follow that the claimant did not *believe* the representation. Thus, it cannot be said that the representation induced a mistake on his part, and he would as a result have no claim for misrepresentation. But if the claimant had some doubt or suspicion but still considered it more likely than not that the representation was true, then the representation *did* induce a mistake on his part and a claim for misrepresentation would lie against the representor. In *Zurich Insurance*, it is difficult to see how Zurich can merely be said to have harboured a *suspicion* that Mr Hayward was lying that fell short of the balance of probabilities, seeing as it had expressly pleaded – and thus asserted on the balance of probabilities – in the earlier proceedings that his representations of his injuries were *false*.

149 Second, *Zurich Insurance* was not properly a case of misrepresentation to begin with. In the first set of proceedings, Zurich had been induced to settle not because of a belief that Mr Hayward's claims of his injuries were true, but because of the risk that Mr Hayward would continue to lie in the proceedings and the court might very well believe him. In our view, one can draw from this that the proximate cause of Zurich's decision to settle was not a mistake about the truth of Mr Hayward's claims, but a *misprediction* as to the likelihood that the court would be taken by Mr Hayward's ruse. Subsequently, when Zurich came into possession of the evidence of Mr Hayward's neighbours, it realised that it had misjudged the probability of Mr Hayward successfully proving his

claims had the matter gone to trial and sought to walk back on the settlement. This, in our view, is the true explanation for why *Zurich Insurance* does not fit within the theory of misrepresentation as a form of mistake. It is not the theory itself which is untenable, but the fact that *Zurich Insurance* was not a case of misrepresentation or mistake, to begin with.

150 The distinction between mistake and misprediction is well-established and applied in various areas of the law, perhaps most prominently in the law of unjust enrichment in respect of claims for restitution for moneys paid under a mistake. In *Pitt v Holt* [2013] 2 AC 108, Lord Walker of Gestingthorpe JSC explained the difference succinctly: “A misprediction relates to some possible future event, whereas a legally significant mistake normally relates to some past or present matter of fact or law” (at [109]). Generally, the law does not offer a remedy for mispredictions. The reason, as explained by Snowden LJ (as he then was) in *Bhaur v Equity First Trustees (Nevis) Ltd* (2023) 25 ITELR 988, is that a “mispredictor can generally be viewed as a conscious risk-taker, who assumes the risk of his speculation proving to be incorrect” (at [66]). Relating this back to *Zurich Insurance*, Zurich was not under any erroneous belief as to the veracity of Mr Hayward’s representations at the time that it had opted to settle. It evidently believed that it was more likely than not that Mr Hayward was lying, having pleaded this as a defence to his claim in the first proceedings (see [148] above). In our view, this should have been fatal to a claim for misrepresentation as Zurich was essentially seeking a remedy for a misprediction. The attempt to analyse the facts of *Zurich Insurance* along the lines of misrepresentation was therefore flawed as it involved fitting a square peg into a round hole.

151 This segues into a third problem with *Zurich Insurance*, which is that, as a matter of policy, the ease with which Zurich was able to set aside the settlement in the first proceedings sets a problematic precedent that undermines

the security of settlement agreements: see Paul S Davies & William Day, “A Mistaken Turn in the Law of Misrepresentation” [2019] LMCLQ 390 at 393–395. Indeed, in the English Court of Appeal, this concern drove Underhill LJ and Briggs LJ (as he then was) to conclude that Zurich should not be entitled to rescind the settlement simply because it had thought better of it, even if the result of this was unpalatable in that Mr Hayward would be able to retain the benefits of his dishonesty in the earlier proceedings: *Hayward v Zurich Insurance Company plc* [2015] EWCA Civ 327 (“*Zurich Insurance (CA)*”) at [19], [25] and [33]. And, in line with our analysis that Zurich had made a misprediction rather than a mistake induced by Mr Hayward’s representations, Briggs LJ observed that there was no unfairness to Zurich as it had entered into the settlement as a form of risk management and had thus assumed the risk that its assessment of the value of Mr Hayward’s claim was wrong: *Zurich Insurance (CA)* at [32]. We agree with these observations, which have found resonance in a subsequent decision of the Judicial Committee of the Privy Council in which *Zurich Insurance* was described as “problematic” in failing to give sufficient weight to the interest of finality in litigation: *Finzi v Jamaican Redevelopment Foundation Inc* [2024] 1 WLR 541 at [65]–[66].

152 Mr Bull’s fallback position was that, even if it was conceptually sound for a misrepresentation to be characterised as a mistake, this was in any event not something that Parliament had contemplated *vis-à-vis* s 29(1)(c) of the LA specifically. In this regard, Mr Bull highlighted that there was apparently no authority in any jurisdiction which had applied s 29(1)(c) or its equivalent to the context of a claim founded on a misrepresentation.

153 We reject this argument for two reasons. First, as we explained to Mr Bull at the hearing, this overlooks that the purpose of s 29(1) of the LA is equally applicable to a case of misrepresentation as it is to mistake. The purpose

of the postponement of the limitation period is to “ensure that a claimant is not disadvantaged ... by reason of being unaware of the circumstances giving rise to his cause of action as a result of fraud, concealment or mistake”: *Test Claimants (No 2)* at [193]. The risk of a claimant being unable to commence proceedings due to “being unaware of the circumstances giving rise to his cause of action” arises so long as the claimant is under an erroneous belief; it should not matter what the *source* of that belief is.

154 Second, in any event, we do not think that it is necessarily correct to say that there is no authority for the view that s 29(1)(c) of the LA can apply to a claim for misrepresentation. We accept that there is no authority that confirms this in terms, but we consider that there *is* authority which lends at least implicit support for this conclusion. In *Peco Arts Inc v Hazlitt Gallery Ltd* [1983] 1 WLR 1315 (“*Peco Arts*”), the claimant had brought a drawing from the defendant which *both parties* mistakenly believed was an original when it was in fact a reproduction. The claimant brought a claim for rescission of the purchase and a claim for damages under s 2(1) of the MA (UK) in the alternative, but later opted to pursue only the former. The court held that s 32(1)(c) of the LA 1980 (UK) – an equivalent to s 29(1)(c) of the LA – applied to postpone the running of the limitation period. In our view, had the claimant pressed on with its claim under s 2(1) of the MA (UK), it is virtually certain that the court would also have held that this claim was within the scope of s 32(1)(c) of the LA 1980 (UK) as it was of identical substance to the claim for rescission, being founded on a mistaken belief (induced, at least in part, by the defendant’s representation) as to the drawing’s provenance and authenticity.

155 In our view, the somewhat surprising silence in the authorities is likely because: (a) a claimant who seeks rescission of the contract can simply argue its case on the footing of an unilateral mistake; (b) there is no need in a case of

fraudulent misrepresentation for the claimant to rely on s 29(1)(c) as ss 29(1)(a) and 29(1)(b) would likely cover such a case; and (c) claims for damages for negligent and innocent misrepresentation are relatively recent developments in the law. Indeed, *Peco Arts* exemplifies the first and third of these explanations we have given for the apparent dearth of authority on the issue, as it was not necessary for the claimant to frame a claim for innocent misrepresentation (even though the facts supported it) or pursue its claim under s 2(1) of the MA (UK), as it could make a claim for rescission of the contract on the ground of mistake, and thereafter claim restitution of the moneys for unjust enrichment on the grounds of mistake or failure of basis.

156 In any case, even if there is no authority on the issue, we consider the argument from principle to be compelling enough to reach the conclusion that “mistake” in s 29(1)(c) of the LA ought to include misrepresentation. What remains to be considered is whether, so far as the relief sought is damages, such a claim is taken outside the scope of s 29(1)(c) due to the operation of s 24A of the LA, as the ICs and Mr Bull have suggested.

The relationship between ss 6(1), 24A and 29(1) of the LA

157 To recap, although the ICs accept that a misrepresentation is a form of mistake, they submit that, where the remedy sought for a misrepresentation is damages, it is not possible for the claimant to rely on the combination of ss 6(1) and 29(1)(c) of the LA because s 24A of the LA ousts the operation of s 6(1) in the event of an overlap between the two provisions (see [130]–[131] above). In this regard, reliance is placed on earlier decisions of this court in which it has been stated that where ss 6 and 24A of the LA overlap, it is the latter provision which would apply (see [61] above).

158 But, as we have noted, none of those decisions spoke of the relationship between ss 6 and 24A of the LA in the context of case like the present where s 6 is sought to be relied on in conjunction with another provision – here, s 29(1)(c) of the LA – to produce a more generous result in limitation than that which s 24A would permit. The issue before us is thus untravelled ground and remains undecided by these earlier decisions that have made the uncontroversial point that ss 6 and 24A would not apply at the same time: that much is clear from how s 24A(3)(a) duplicates the effect of s 6(1) by prescribing a limitation period of six years from the accrual of the cause of action, subject to displacement by s 24A(3)(b) if it would result in a more favourable outcome than s 24A(3)(a). Thus, unlike s 29(1)(c), which does not itself prescribe a limitation period but operates solely as an exception, s 24A(3) creates both the rule and the exception. If a claim would fall within the scope of s 24A(3), is it possible for the claimant to nonetheless rely on the alternative combination of ss 6 and 29(1)(c)?

159 In our judgment, the answer to this is in the affirmative. We do not agree with the ICs that s 24A of the LA completely displaces s 6 of the LA such that, so long as s 24A is applicable to the cause of action, s 6 is rendered completely irrelevant. Such a construction, in our view, is contrary to the structure of the LA.

160 First, s 5 of the LA provides that the provisions of Part 2 – such as s 6 of the LA – operate subject to the provisions of Part 3. This means what it says. Thus, where the only possible conflict is between ss 6 and 24A, the effect of s 5 is that the latter would prevail, as earlier decisions of this court have confirmed. But, where the conflict is between two different provisions of Part 3, such as ss 24A(3) and 29(1)(c), nothing in the LA suggests that the former must be given precedence over the latter. In such a case, it is not correct to say that this would result in s 6 being given precedence over s 24A (in a way that contradicts

the directive in s 5), because s 6 is only brought into the picture by s 29(1)(c) which, as mentioned, is not expressed to be subject to s 24A(3) in any provision of the LA.

161 Second, it should not be overlooked that, even though s 24A(3) prescribes its own base limitation period under s 24A(3)(a), and therefore duplicates the operation of s 6(1), it is ultimately enacted within Part 3 of the LA. The Explanatory Statement of the Limitation Bill 1959 expressed the relationship between Part 2 and Part 3 as the former “set[ting] out the various periods of limitation” and the latter “deal[ing] ... with the extension of the period of limitation in certain cases”. In our view, what this means is that s 24A is strictly an exception to a rule rather than the rule itself, which is s 6. The starting point is therefore s 6, as a provision which “sets out the various periods of limitation”, albeit that, in cases of “breach of duty” that come within the scope of s 24A(3), an alternative limitation period may apply if that results in an “extension of the period of limitation” (*ie*, a more favourable result than if s 6 were applied alone). True to this, s 6 is of a broader scope than s 24A – for example, claims for breach of contract, which would be a claim for “breach of duty” under s 24A(1), are a subset of claims “founded on a contract” under s 6(1)(a) – and the narrower scope of s 24A relative to s 6 is consistent with the view that the former is an exception to the latter rather than existing on the same plane as an alternative rule. It would turn the structure of the LA on its head for one to begin with s 24A rather than s 6.

162 In our view, this is also consistent with the purpose of s 24A of the LA. Section 24A was introduced into our law to mirror developments in English law with the Latent Damage Act 1986 (c 37) (UK) (“LDA 1986 (UK)”) which was passed to deal with the issue of *latent damage* in the light of the decision of the House of Lords in *Pirelli General Cable Works Ltd v Oscar Faber & Partners*

[1983] 2 AC 1 (“*Pirelli*”): Singapore Parl Debates; Vol 60, Sitting No 1; Cols 31–32 [29 May 1992] (Prof S Jayakumar, Minister for Law). In *Pirelli*, the House of Lords confirmed that a cause of action that was not actionable *per se* would accrue at the moment damage was suffered – and therefore, the limitation period would begin to run – even if the damage was not reasonably discoverable until a later point in time. This was thought, unsurprisingly, to be a harsh and unfair outcome as it would be possible for a limitation period to lapse even before the claimant could have discovered that he had a cause of action. The provisions in the LDA 1986 (UK) were thus introduced to legislate for an alternative limitation period – the local equivalent of which is s 24A(3)(b) of the LA – to avoid such a seemingly unfair outcome: *Management Corporation Strata Title Plan No 4099 v KTP Consultants Pte Ltd* [2024] 1 SLR 1226 at [32]–[35].

163 In our view, it must be borne in mind that the LDA 1986 (UK) was never intended to *disadvantage* claimants. On the contrary, it was intended to tilt the scales in the claimant’s favour based on the perception that the law as it stood was not satisfactory. Given that s 32(1)(c) of the LA 1980 (UK) predated the LDA 1986 (UK), the correct understanding of how the two provisions relate to one another, as informed by the purpose of the LDA 1986 (UK), would seem to be that, to the extent that a provision introduced by the LDA 1986 (UK) would result in a claimant having *less time* to bring an action than he would have had under the existing law prior to the LDA 1986 (UK), such an interpretation could not have been intended.

164 Indeed, while the point was admittedly not addressed with specificity, the general tenor of the report of the Law Reform Committee whose recommendations led to the LDA 1986 (UK) is that none of the developments that the Committee was recommending would result in a claimant having less

time than he would have had under the existing law to bring an action: see Law Reform Committee, *Twenty-Fourth Report (Latent Damage)* (Cmnd 9390, 1984) (“*Twenty-Fourth Report*”). Section 32(1) of the LA 1980 (UK) appears to have been mentioned in only two areas in the *Twenty-Fourth Report*. First, in a section titled “The Present Law and Its Difficulties”, the Committee explained that “section 32 of the 1980 Act [had not been] generally criticised on consultation” and it therefore did not intend to make any recommendations for its amendment: *Twenty-Fourth Report* at para 2.2. Second, in the section setting out its “Recommendations for Reform”, the Committee indicated that while s 32(1) of the LA 1980 (UK) was capable of postponing the commencement of a limitation period indefinitely, the Committee did not think that this position should be changed by its separate recommendation that most limitation periods should be subject to a “long stop” – which it proposed to be 15 years from the events giving rise to the claim (*Twenty-Fourth Report* at para 4.13) – as it would be unfair for time to run against a claimant in cases which engaged s 32 of the LA 1980 (UK) (see *Twenty-Fourth Report* at para 4.20):

Extension of time under section 32 of the 1980 Act (Fraud, Concealment, Mistake)

4.20 Special provision is already made in the general law for actions involving fraud, deliberate concealment or mistake with the result that in such cases the period of limitation does not begin to run until the plaintiff discovers the fraud, concealment or mistake (or could with reasonable diligence have discovered it). In such cases the plaintiff’s cause of action could in theory be indefinitely postponed. It can, however, be argued that our proposed long stop should also apply to actions involving fraud, deliberate concealment and mistake. *We do not think that this would be appropriate, and it is interesting that very few of those who submitted comments to us suggested that there should be any change in section 32 of the 1980 Act.* The essential feature of the section is that it is based on some degree of responsibility on the part of the defendant beyond his mere failure to comply with his legal obligations, and the traditional view taken by the courts of such conduct is that it would be “against conscience” to allow a defendant to take advantage of such behaviour by lapse of time. *We believe that it would be no less repugnant to*

most people’s sense of justice to allow such defendants to take advantage of a long stop provision, and we therefore make no recommendation in this area. Accordingly, the long stop will come into play in those latent damage cases where there has been negligence by inadvertent or careless acts or omissions but not where there has been, in the words of section 32(2) a “deliberate concealment of a breach of duty in circumstances in which it is unlikely to be discovered for some time”.

[emphasis added]

In our view, the *Twenty-Fourth Report* confirms our view that the provisions which were later introduced into English law through the LDA 1986 (UK) were intended to work only in the favour of the claimant and to give claimants time which they did not have under the previous law. Thus, in so far as there appears to be any conflict in the outcomes produced by ss 24A and 29(1)(c) of the LA, the *Twenty-Fourth Report* supports our view that the latter should prevail if it would be more advantageous to the claimant.

165 It is curious that, although the Committee had expressed the opinion that the operation of s 32 of the LA 1980 (UK) should not be affected by the new provisions that were to come in the LDA 1986 (UK), the English legislature did not follow suit. Thus, s 32(5) of the LA 1980 (UK) – a provision introduced by the LDA 1986 (UK) – provides that ss 14A and 14B of the LA 1980 (UK) – respectively, the equivalents to ss 24A(3) and 24B of the LA – do not apply to any action which s 32(1)(b) of the LA 1980 (UK) applies to. The fact that an express saving is made only for s 32(1)(b) – the equivalent to s 29(1)(b) of the LA, which concerns fraudulent concealment – suggests that s 14A of the LA 1980 (UK) *would* override s 32(1)(c) of the LA 1980 (UK). It is not clear why the English legislature departed from the Committee’s view in the *Twenty-Fourth Report* that s 32 of the LA 1980 (UK) should not be affected in its operation.

166 Nevertheless, the position in Singapore under the LA differs markedly from that of the LA 1980 (UK). There is no equivalent provision to s 32(5) of the LA 1980 (UK) in the LA which subordinates s 29(1) of the LA to s 24A of the LA. This puts Singapore law on the same footing as the view that the Committee had suggested in the *Twenty-Fourth Report*. Even more critically, perhaps, the equivalent to s 24A(3) of the LA under English law was introduced within *Part I* of the LA 1980 (UK), which sets out the “ordinary time limits for different classes of action”. This differs again from the approach that Parliament took with s 24A(3) of the LA since it was enacted within Part 3 and not Part 2 of the LA. Moreover, while there is an express provision in the LA 1980 (UK) which disapplies the equivalent to s 6(1)(a) of the LA (s 2 of the LA 1980 (UK)) if the equivalent to s 24A(3) of the LA (s 14A of the LA 1980 (UK)) applies (see s 14A(2) of the LA 1980 (UK)), no such provision was enacted under our law. The decision to enact s 24A within Part 3 and not Part 2 of the LA suggests, in our view, that Parliament intended to maintain the *status quo* of s 6 of the LA being the “base” provision from which s 24A(3) would be a departure from. Parliament must be taken to have been aware of the approach that English law had taken with the LDA 1986 (UK). In our view, we are required to give significance to the deliberate manner in which Parliament chose to enact s 24A of the LA into our law, even if its roots may lie in the LDA 1986 (UK): see *Blackstone* at [45]–[46].

167 In the circumstances, bearing in mind that the provisions of the LDA 1986 (UK) which were received into our law through s 24A of the LA were intended to work to the advantage of claimants, and the lack of any contrary indication under our law (as compared to the approach taken by the English legislature), we consider that s 24A of the LA does not displace the operation of s 29(1)(c) of the LA. It is therefore open to the appellant to rely on the

combination of ss 6 and 29(1)(c) of the LA notwithstanding that its claim may also fall within the scope of s 24A of the LA. The short point is that both s 24A and 29(1)(c) are provisions which are intended to work in the appellant's favour, and it would therefore be wrong to interpret the one as cutting down the other.

Whether the appellant's claim is time-barred on the facts

168 In view of our conclusions above that (a) the appellant's cause of action under s 2(1) of the MA is subject to a six-year limitation period under s 6(1) of the LA and (b) this cause of action is within the scope of s 29(1)(c) of the LA as an action for "relief from the consequences of a mistake", we turn to the facts of this case.

169 Given that OC 366 was filed on 16 May 2024, the critical question is whether the appellant did or could with reasonable diligence have discovered that the Representations were false – and thus realised its "mistake" under s 29(1)(c) of the LA – as of 16 May 2018 (six years before the filing of OC 366).

170 The Judge stated that, if he had held that s 29(1)(c) of the LA was applicable, he would not have struck out the appellant's claims as "based on the pleadings alone, it is not possible to tell whether the [appellant] could have, with reasonable diligence, acquired knowledge of [the] deficiencies [in the Medical Unit] prior to 16 May 2018 specifically": Judgment at [148].

171 We see no reason to take a different view. It is trite that the threshold for striking out is a high one, and a claim should only be struck out if it is plainly and obviously unsustainable: *Gabriel Peter & Partners v Wee Chong Jin* [1997] 3 SLR(R) 649 at [18]. In this regard, seeing as the appellant has alleged that the respondent had maintained the truth of the Representations at the 21 May 2018 Meeting – five days after the crucial date of 16 May 2018 for the purposes of

limitation – we think it cannot be said to be plain and obvious that the appellant could have discovered that the Representations were false as of that date. The appellant’s claim under s 2(1) of the MA should therefore not be struck out on the ground that it is time-barred due to the operation of s 29(1)(c) of the LA. The exact knowledge that the appellant had on 16 May 2018, and whether this would have sufficed for it to embark on the preliminaries to commencing proceedings under s 29(1)(c), is a question of fact that should be determined at the trial.

Conclusion

172 To summarise, we consider that neither of the appellant’s two causes of action – its claim for damages under s 2(1) of the MA or its claim for rescission of the SPA – are time-barred:

(a) The claim under s 2(1) of the MA is subject to a six-year limitation period under s 6(1)(a) of the LA, but we are satisfied that, it is not plain and obvious that the appellant did or could with reasonable diligence have discovered the falsity of the Representations made by the respondent as of 16 May 2018 (six years before the filing of OC 366).

(b) The claim for rescission of the SPA, being a claim for equitable relief within equity’s exclusive jurisdiction, is not subject to a limitation period under the LA. It may be subject to laches, but laches has not been relied on or advanced by the respondent at this juncture.

Accordingly, we allow the appeal and set aside the Judge’s order striking out OC 366.

173 Given that the appellant has succeeded in the appeal, it is in principle entitled to the costs of the appeal as well as the proceedings below. That said, we are not minded to award the appellant the full costs it has claimed as the appeal has been allowed to a considerable extent on grounds that the appellant either did not advance or even contradicted. In the premises, we fix the costs of this appeal in the sum of \$45,000 (all-in), to be paid by the respondent to the appellant. As for the costs orders for the proceedings below:

- (a) we reinstate the costs order of \$9,700 (all-in) made by the assistant registrar in favour of the appellant for the underlying striking-out application;
- (b) we set aside the Judge's costs order for the respondent's appeal against the assistant registrar's decision and substitute it with an order that the respondent pay the appellant costs in the sum of \$15,000 (all-in); and
- (c) we set aside the Judge's order awarding the respondent costs of \$5,000 (all-in) for OC 366.

174 The usual consequential orders will apply.

175 Finally, we express our deepest gratitude to Professor Elliott and Mr Huang for their invaluable assistance. Their submissions were not only well-researched but were also a model of clarity in presentation. We also commend them for the manner in which they ably responded to our multitude of complex questions. The result was a lively and productive conversation between the bar

and the bench which has been of immense assistance in our consideration of the issues in this appeal.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Ang Cheng Hock
Justice of the Court of Appeal

Hri Kumar Nair
Justice of the Court of Appeal

Kannan Ramesh
Judge of the Appellate Division

Mahmood Gaznavi s/o Bashir Muhammad and Rezza Gaznavi
(Mahmood Gaznavi Chambers LLC) for the appellant;
Cavinder Bull SC, Lin Shumin, Tan Shihao Sean and Tan Jun Hao
(Drew & Napier LLC) for the respondent;
Professor Steven Elliott KC (Faculty of Law, National University of
Singapore) as independent counsel;
Huang Jiahui (Huang Jiahui) as young independent counsel.
